

Exhibit 7

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From: Charles Shigley [<mailto:cshigley@alcourt.com>]

Sent: Tuesday, November 28, 2017 4:38 PM

To: Scott Switzer <scott@snsll.com>

Cc: Ernie Velton <ErnieV@jshproperties.com>; Jennifer Bell <jenniferb@jshproperties.com>; Alan Feld (afeld@sheppardmullin.com) <afeld@sheppardmullin.com>

Subject: RE: October operating report

Mr. Switzer,

As you know the bankruptcy case has been dismissed and Olympia Office LLC and its affiliates are not parties to the state court receivership action. Your request should be directed to Alan Feld, counsel for the party that instituted the receivership action.

Chuck Shigley
Alston, Courtnage & Bassetti LLP
1420 Fifth Avenue, Suite 3650
Seattle, WA 98101-4011
Direct: 206-802-2161
Main: 206-623-7600
email: cshigley@alcourt.com

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Begin forwarded message:

From: Scott Switzer <scott@snsll.com>
Date: November 27, 2017 at 8:58:35 PM PST
To: Ernie Velton <ErnieV@jshproperties.com>, Jennifer Bell <jenniferb@jshproperties.com>
Cc: Kazu Yamaguchi <Kazu@snsll.com>
Subject: October operating report

Hi Ernie and Jennifer:

We have not seen the October operating statements. Would you please send them to me.

Thanks,

Scott

Scott G. Switzer | C.E.O. | Superior Note Solutions, LLC
scott@snsll.com | p: +1.206.972.6050 | f: +1.425.698.1866
10900 NE 4th Street, Suite 2300 | Bellevue, WA 98004

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Exhibit 8

REDACTED

From: Scott Switzer <scott@snsll.com>

Date: September 28, 2017 at 10:25:37 PM PDT

To: Ernie Velton <ErnieV@jshproperties.com>, Jennifer Bell <jenniferb@jshproperties.com>

Cc: Michael Pilevsky <mpilevsky@pihc.com>, Kazu Yamaguchi <Kazu@snsll.com>

Subject: Changes in Status

Good evening Ernie and Jennifer:

There were two significant events that happened today related to our properties.

First, the Moses Lake property sale closed today. I assume you know as you would have been involved in final cut off of services. As it was a bit of a slog the last few days, it did in fact close today, so it is officially off the books.

The second event was that in a hearing in court today the Judge dismissed the bankruptcy case related to our companies.

That means that you are now employed solely by our companies. The employment agreement approved by Judge Trust is now null and void and the Court and our lender now have no jurisdiction or input into our operations. The court is gone. Midland has no right to speak with you except as authorized by us.

I would propose that we speak tomorrow to discuss a new management agreement.

Please do not for at least the next few days communicate anything about the properties to Midland or their attorneys.

Do not transfer or pay any funds from the properties' accounts to them.

We will be meeting with Midland in the near future to discuss how we will work together. Until that time do not communicate with them about our properties. Do not give them any funds.

Thanks,

Scott Switzer
COO
WA Properties, LLC

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Exhibit 9

**Merrill Lynch Mortgage Trust 2005-MCP1 (A Note)
Mezz Cap Commercial Mortgage 2004-C2 (B Note)**

Foreclosure Bid Case and REO Business Plan



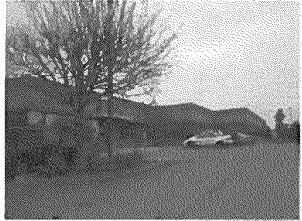
5000 Capitol – Ins Commission



645 Woodland Sq – Dept of Licensing



Lacey Prudential



Wenatchee 2-DSHS Dept.



Moses Lake-Vacant



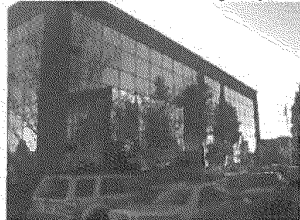
Seattle West-Licensing Dept



637 Woodland Sq-Dept of Corrections



629 Woodland Sq-Vacant



640 Woodland Sq-DSHS Dept.

CDC Properties I, LLC

9 Office Buildings

Various Locations

**Lacey, Tumwater, Wenatchee, Seattle, and
Moses Lake, Washington**

MLS Loan No. 030243254

Merrill Lynch Mortgage Trust 2005-MCP1

Wells Fargo Bank, National Association, as Trustee

Midland Loan Services, a division of PNC Bank, National Association, as Primary & Master
Servicer

Midland Loan Services, a division of PNC Bank, National Association, as Special Servicer
Sutherland Asset I, LLC c/o Waterfall Asset Management, as Controlling Class Representative

MLS Loan No. 030264594

Mezz Cap commercial Mortgage 2004-C2

LaSalle Bank, National Association, as Trustee

Wells Fargo Bank, National Association, as Master Servicer

Midland Loan Services, a division of PNC Bank, National Association, as Special Servicer

Mezz Cap, as Controlling Class Representative

Prepared By: David Bornheimer

Date: October 13, 2016

CDC Properties I Collateral List

CDC Properties I LLC, (collectively "Properties")

Attorney General Building
629 Woodland Square Loop
Lacey, WA 98503

Department of Corrections Building
637 Woodland Square Loop SE
Lacey, WA 98503

Department of Licensing Building
645 Woodland Square Loop SE
Lacey, WA 98503

Seattle West
8830 25th Avenue SW
Seattle, WA 98106

5000 Capitol Building
5000 Capitol Blvd.
Tumwater, WA 98502

Lacey Prudential
4565 7th Avenue
Lacey, WA 98503

Lacey-DSHS
640 Woodland Square Loop SE
Lacey, WA 98503

Moses Lake Building
1620 Pioneer Way
Moses Lake, WA 98837

Wenatchee Bldg #2
805 S. Mission Street
Wenatchee, WA 98801

EXECUTIVE SUMMARY:

Midland is recommending to complete the nonjudicial foreclosure of the nine collateral Properties for the subject loan that total 318,055 sf. CDC Properties I, LLC ("Borrower" or "Reorganized Debtor") filed Ch. 11 BK on 2/10/11. The A Note and B Note (together "Notes") were modified pursuant to an approved BK Plan on 11/22/11. The Reorganized Debtor monetarily defaulted on both Notes. A workout with the Reorganized Debtor was unsuccessful so JSH Properties, Inc. was appointed Custodial Receiver on 5/19/16. Prior to the foreclosure sale, Midland will transfer the loan from the trust to MLMT 2005-MCP1 Washington Office Properties, LLC ("REO Entity"), a SPE entity created to hold title to the subject Properties with the trust as the sole member and Midland as the manager. The REO Entity will bid up to the appraised value for each individual property as detailed in the Recommendation Section of this proposal at the foreclosure sales which are scheduled to occur on 10/21/16. If the REO Entity is the winning bidder at the foreclosure sales, the REO Entity will engage JSH Properties, Inc. as the property manager and leasing agent for the Properties. The REO Business Plan is to continue leasing efforts over the next 6 months to attempt to increase occupancy prior to sale of the Properties. Midland will consider sales of the Properties in outlying areas that are not expected to bring value to a larger portfolio sale. Hyun J. Um, the carve-out ("Guarantor") filed for Ch. 11 BK in 2010 and had a plan approved in 2015 that extinguished any claim by the noteholders of both Notes. No further legal action will be taken against the Borrower or Guarantor.

ASSET BACKGROUND / UPDATE:

The \$40,700,000 A Note and \$2,557,500 B Note were originated September 29, 2004 by Merrill Lynch Mortgage Lending, Inc. to CDC Properties I, LLC, to refinance existing debt. The Borrower is comprised of CDC Acquisition Company I, LLC, which is owned by Tom Price and Hyun Um, two Seattle area real estate investors. The Notes were originally scheduled to mature 10/1/14, however, the maturity date for the Notes was modified to 10/17/17 pursuant to a bankruptcy plan.

<u>LOAN DATA</u>	<u>A Note</u>	<u>B Note</u>
Original Loan Amount	\$40,700,000	\$2,557,500
Current Loan Balance	\$30,556,354	\$2,505,366
Interest Rate	5.45%	12.75%
P&I Payment	\$229,814.95	\$27,792.18
Next Due	7/1/2016	6/1/2014
Origination Date	9/29/2004	9/29/2004
Maturity Date	10/17/2017	10/17/2017
Percentage of Portfolio	51.93% of \$58,663,944	NA
Loan to Portfolio Rank	1 of 6	NA
Escrows	\$ (57,436)	\$ -
NOI 8/31/16	\$ 1,635,753	\$ 1,635,753
Portfolio Occupancy 10/1/16	78.1%	78.1%
DSCR-NOI (8/2016 ytd)	0.59	0.53
DSCR-NCF (2016 ytd)	0.48	0.43

*All reserve and escrow funds have been swept and applied

**Midland does not have Trepp access for the Mezz Cap 2004-C2 portfolio to determine portfolio rank details.

Borrower and Guarantor:

The Borrower is CDC Properties I, LLC, having CDC Acquisition Company I, LLC, as sole member, which is owned by principals Tom Price and Hyun Um, two Seattle area real estate investors who own Prium Companies. During the 2001-2005 period, Prium Companies acquired several portfolios of office buildings in Metro Seattle and Olympia, Washington with CMBS non-

recourse loans. When the economic downturn occurred in 2009-10, the sponsors defaulted on several debt portfolios, and filed Ch. 11 Bankruptcy. The Borrower acquired the subject Properties from Bob Bloom, with the subject A Note and B Note financing, totaling \$43.3 million in 2004. Hyun Um, a Korean investor who solicited investors from the Korean community, is the Guarantor. Due to loss of several tenants and cash flow problems, the Borrower defaulted on the subject loans in 3Q 2010. The Borrower filed Ch. 11 Bankruptcy in February 2011, which triggered full recourse to the Guarantor on the subject loans. Debtor's Reorganization Plan ("Plan") was reviewed and approved by the Court November 22, 2011, simultaneously with Noteholder's Loan Modification closing. The Bankruptcy Trustee oversees the Plan, with a view toward collecting funds equitably for the creditors.

Midland became aware on 9/30/16 that the BK Trustee, Eric Orse, provided quit claim deeds to all nine Properties to the following entities on 9/23/16:

- Seahawk Portfolio, LLC, a Florida limited liability company, as a tenant in common with an undivided 30% interest;
- Mariners Portfolio, LLC, a Virginia limited liability company, as a tenant in common with an undivided 10% interest;
- WA Portfolio, LLC, a Delaware limited liability company, as a tenant in common with an undivided 30% interest;
- Olympia Office, LLC, a New York limited liability company, as a tenant in common with an undivided 30% interest;

Midland and its outside counsel are investigating the reason for the ownership transfer. The BK Trustee did not timely respond so Midland's outside counsel has noticed Mr. Orse for a deposition on 10/13/16. At this time it is not clear what, if any, compensation was paid to the BK Trustee for the Properties. The Receiver noted it has been contacted by Scott Switzer, a known local investor, requesting financial information and access to the Properties to conduct appraisals. Outside counsel has noted there was no court approval necessary for the transfer of the CDC properties, because CDC is not a debtor in bankruptcy (which would require court approval). The Trustee controls CDC by virtue of being the trustee of the Prium Companies, LLC, its manager. Under CDC's bankruptcy plan from 2011 (when it was a debtor), CDC is permitted to sell or transfer the properties, if the sale or transfer generates sufficient return to pay all creditors in full - so at a minimum, the transfer was contrary to what was allowed under the bankruptcy plan.

Chapter 11 Bankruptcy

The Borrower had placed mezzanine debt on the collateral Properties with Equity Funding, LLC (d/b/a Centrum Financial Services), on which it defaulted in 2010. Equity Funding filed action against the Borrower. In response, the Borrower filed Ch. 11 Bankruptcy on February 10, 2011, and the loan was transferred to Special Servicing. After completing negotiations with creditors, the Borrower submitted its Plan of Reorganization ("Plan") in mid-2011. The Plan was approved by the creditors and entered into the Bankruptcy Court November 22, 2011. The Special Servicer obtained approval for a Loan Modification, with the same terms approved in the Plan. The Modification closed November 22, 2011, with the following terms:

Debtor Plan-Loan Modification:

- Maturity Dates-A Note & B Note: Extended to November 17, 2017
- Prepayment: Prepayable at par, without premium, at any time
- Loan Modification & Bankruptcy related legal costs & fees (\$549K) payment approved
- Class 1 & 2 Claims approved: \$6,000,000 – Equity Funding claims & Bingo claim
- Class 3 Claim approved: \$36,311,191 – Wells Fargo Bank, Trustee-A Note

- Class 4 Claim approved: \$2,533,530, plus \$361,298 Accumulated P&I Payments owing (13 pmts 10/2010-10/2011)– LaSalle Bank, Trustee-B Note
- Class 5 Claim approved: \$150,000 – Unsecured Creditors
- Class 6 Claim approved: Equity Interests – Retained by Equity Funding.
- Debtor to make required payments property revenues & operating cash
- Debtor may sell or refinance the Properties, or any component thereof, provided that net sale or refinance proceeds are sufficient to repay Class 1-5 claims
- Trustee shall ensure all distributions are accomplished per the Plan

Debtor Plan-Lock Box-Cash Management Modification:

The Lock Box-Cash Management Agreement established at loan origination remained in place, subject to the following changes in the monthly Waterfall requirements:

- a) Reserves: taxes, insurance; property operating expenses; administrative expenses-bank fees
 - b) Replacement Reserve; Re-letting Reserve
 - c) A Note Debt Service
 - d) B Note Debt Service
 - e) Class 5 Claim Payments: three payments of \$50K – 01/12, 07/12, & 01/13
 - f) Misc. Reserve: Repayment of funds withdrawn for modification & bankruptcy legal fees
 - g) Accumulated B Note interest payments of \$361,298.34 (*)
 - h) Class 6 Claim-Settlement Amount for Equity Funding & Bingo Lawsuit (*)
 - i) Remaining funds: to Debtor (*)
- *From available cash flow only

Upon closing of the Loan Modification and collection of three timely, consecutive loan payments, the Loan was returned to the Master Servicer.

Current Special Servicing:

The loan transferred back to the Special Servicer on April 15, 2013, due to payment default, when B Note payments became past due. Between 2012 and 2014, various State agency tenants missed rent payments on 6 different occasions, causing short term delinquency. In each case, however, the tenants made two rent payments the next month to catch up. In addition, over \$160K in Property Protection Advances (appraisals, Phase I and PCA Reports, and legal expenses) and \$150,000 in Class 5 creditor payments during 2012 and 2013 also reduced Net Cash Flow. The Special Servicer issued a Notice of Default for the B Note effective June 1, 2014. Per the Intercreditor Agreement, this caused a non-monetary default on the A Note. Special Servicer continued to process monthly Waterfalls, posting funds to escrows, reserves, A Note and B Note payments, and releasing operating expenses to Borrower.

On September 1, 2015, the Borrower missed the A Note payment, and a Notice of Default and Demand was issued. The delinquency was caused by two large tenant vacancies that decreased NOI. The Special Servicer directed outside counsel to engage a Successor Trustee, Schweet Linde, to file for non-judicial foreclosure. The Title Sale Guarantee has been received for each Property and Notice of Trustee's Sale were recorded for each Property on 7/5/16. The Borrower has until 10/16/16 to reinstate the loan to cause a discontinuance of the sale. The foreclosure sale is currently scheduled for 10/21/16.

PROPERTY INFORMATION

The portfolio collateral originally consisted of 11 Class B office buildings, built from 1973 through 2001, totaling 338,855 RSF, located in five markets throughout Washington: 1) Lacey-Tumwater (Olympia): 6-low rise and mid-rise office buildings (254,761 RSF); 2) Wenatchee: 2-1 story office buildings (39,183 RSF); 3) Moses Lake: 1-1 story building (25,307 RSF); 4) West Seattle:

1-1 story building 9,604 RSF), and 5) Chehalis: 1-1 story building (10,000 RSF). Of the 11 buildings, 7 were single tenant and 4 were multi-tenant. All buildings were primarily leased to State of Washington agencies – with leases averaging 5-year terms.

The Chehalis 1 office building located at 2025 NE Kresky Ave, Chehalis, WA, (10,000 RSF) was sold on 6/22/06 for \$1,200,000 and a partial release of the collateral was approved. Net sale proceeds of \$1,103,490 were wired to the Master Servicer and funds were held in a Miscellaneous Reserve account, established April 28, 2006; such reserve funds have since been applied per the loan documents and BK order.

The Wenatchee 1 office building located at 215 Bridge St., Wenatchee, WA, (10,800 RSF) was sold on 1/8/16 for \$1,250,000 and a partial release of the collateral was approved. Net sale proceeds of \$1,171,159 were wired to the Master Servicer and applied to the A Note as a principal curtailment per the loan documents.

The remaining collateral consists of nine office buildings (318,055 RSF), with 78.1% overall occupancy as of 10/1/16. The buildings were built between 1973 and 2001. The buildings range from Class C 1-story properties to Class A- mid-rise properties; with most being Class B, built in the 1980's. Six buildings are single tenant; three are multi-tenant. All tenants are State of Washington agencies and most are on 5-year leases. Average in-place rent is \$17.18/sf modified gross, with tenants paying own utilities and janitorial for leased premises. The exception to the lease structure is the Employment Security Department's recent lease renewal for 82,149 sf at the Lacey DSHS building where the borrower negotiated a full service lease with the landlord paying all expenses including utilities and janitorial. The chart below details the remaining loan collateral:

<u>Property</u>	<u>Address</u>	<u>City</u>	<u>ST</u>	<u>Built</u>	<u>NRSF</u>	<u>Occup %</u>	<u>Descrip.</u>	<u>Suites</u>	<u>Major Tenants</u>
Attorney General Building	629 Woodland Square Loop SE	Lacey	WA	1985	33,289	0.0%	Cl B, 4 story	3	Vacant
5000 Capital Building	5000 Capital Blvd.	Tumwater	WA	1973	48,080	100.0%	Cl C, 2 story	1	Insurance Commissioner (100%)
Dept. of Corrections Building	637 Woodland Square Loop SE	Lacey	WA	1988	18,104	100.0%	Cl B, 2 story	1	Dept of Corrections (100%)
Dept. of Licensing Building	645 Woodland Square Loop SE	Lacey	WA	1985	5,746	100.0%	Cl B, 1 story	1	Dept of Licensing (100%)
Lacey Prudential	4565 7th Ave SE	Lacey	WA	2001	86,596	87.6%	Cl A-, 4 story	9	Gambling Commission (64.2%)
Lacey DSHS	640 Woodland Square Loop SE	Lacey	WA	2000	84,866	96.7%	Cl A-, 4 story	3	Employment Security (83%)
Moses Lake Building	1620 Pioneer Way	Moses Lake	WA	1980	25,307	0.0%	Cl B-, 1 story	1	Vacant
Seattle West	8830 25th Ave, SW	Seattle	WA	1977	9,604	100.0%	Cl C, 1 story	1	Dept of Licensing (100%)
Wenatchee Building #2	805 S. Mission St.	Wenatchee	WA	1988	28,383	100.0%	Cl B, 1 story	1	DSHS (100%)
Totals					318,055	78.1%		21	

*Lacey Prudential: Gambling Commission will be vacating its 42,745 sf space at lease exp of 2/28/17 which will decrease the portfolio occupancy to 64.7%.

JSH Properties, Inc. was appointed Custodial Receiver ("Receiver") of the nine collateral Properties on 5/19/16. The Receiver discovered that the Properties had generally been neglected by the Borrower. Below is a summary of the capital needs identified by the receiver.

- Attorney General Building: Heat pumps, boiler, and cooling tower replacement. The last full time tenant in the building was ten years ago and the HVAC system has not been maintained. The system is in disrepair and will need replaced to heat the building. The receiver has estimated \$800,000 to replace the system. As an alternative, the receiver will purchase oil filled heaters and box fans to provide freeze protection until a tenant is found to occupy the building.
- Department of Licensing Building and Attorney General Building: The parking lot is shared between the buildings and it floods with heavy rains which has caused significant asphalt damage. The Receiver has cleared the drain lines and will monitor for future flooding to determine if drain lines need replaced. Once the flooding issue resolution is

confirmed the asphalt will be repaired as required under the Department of Licensing lease. Estimated cost \$250,000.

- Lacey DSHS: The roof is leaking in the vacant area and has caused mold. The Receiver is replacing the lower roof and remediating the mold damage at an estimated cost of \$600,000.
- Moses Lake: The roof is in need of replacement, cost to replace is \$165,000. The receiver has a tenant prospect for this building. If a lease is signed the Receiver will replace the roof but, if not, the roof will be patched to extend the life through the winter until a tenant is found to occupy the building.
- Seattle West: Landscaping was overgrown and attracting homeless people; the Receiver cleaned up the landscaping.
- Wenatchee II: The roof is in need of replacement, which the Receiver is in the process of replacing at an estimated cost of \$185,000.

The Receiver's June 2016-December 2016 budget includes the following which total \$3,846,460. The projects are underway and projected to be completed by year end or early 1Q 2017:

- TIs: \$360,000 for the Employment Security Department lease renewal for 82,149 sf at the Lacey DSHS building;
- LCs: \$276,880 for the Employment Security Department and Insurance Commission lease renewals;
- Landlord Work: \$1,592,843 for building repairs required under the Employment Security Department and Insurance Commission lease renewals;
- Immediate building improvements: \$778,242;
- The remainder of the large HVAC, parking lot, and plumbing expenses of \$838,495 are included in the Receiver's budgeted R&M.

The Receiver's budget also includes additional R&M of \$4.82/sf and building engineer costs of \$1.47/sf; total \$6.29/sf. Midland expects these expenses to come down closer to IREM standards in 2017 and 2018 which is under \$2/sf once the capital items are remediated and buildings are stabilized.

Leasing Update:

- Moses Lake Building: The DSHS tenant vacated its 25,307 RSF space at expiration on July 31, 2015 with a loss of \$367K/yr of base rent.
- Seattle West: The Department of Licensing signed a lease with the Borrower for 9,604 sf on 12/22/15 at a rental rate of \$21.80/sf.
- 5000 Capitol Building: The Receiver signed a five year lease extension with the Office of the Insurance Commissioner for 46,080 sf dated 6/7/16 at a rental rate of \$18.41/sf. The TI allowance provided by the landlord was \$4.12/sf.
- Department of Licensing Building: The Receiver is in negotiations to extend the 5,746 sf lease with Department of Licensing for five years which is scheduled to expire 1/31/18.
- Lacey DSHS: The Receiver signed a five year lease extension with the Employment Security Department for 70,449 sf dated 6/7/16 at a rental rate of \$19.40/sf. The TI allowance provided by the landlord was \$5.11/sf, additionally the landlord committed to certain building improvements of \$19.10/sf. The landlord pays utilities and janitorial under this new lease, which was negotiated by the Reorganized Debtor and contrary to the other State agency lease structures.
- Lacey Prudential: Four leasing issues 1) The Receiver executed a six month lease extension dated 6/20/16 with the Gambling Commission for 42,745 sf which expires 2/28/17. The tenant has provided notice that it will be vacating during this extension

period. 2) The Receiver is in negotiations to extend the 10,124 sf lease with DSHS for five years which is scheduled to expire 9/30/16. 3) The Receiver is in negotiations to extend the 5,495 sf lease with Department of Services for the Blind for five years which is scheduled to expire 9/30/16. 4) The Receiver is negotiating a LOI with US Healthvest for 100% of the building for a 30 year lease for a mental hospital use which will require usage changes. The Receiver is in discussions with the city regarding the use and will wait to extend the DSHS and Services for the Blind until additional due diligence is completed with US Healthvest.

- Wenatchee Building 2: The Receiver is in negotiations to extend the 28,383 sf lease with the Department of Social and Health Services for five years which is scheduled to expire 11/30/18.

Taxes:

Taxes are current and next due 10/31/16. Midland will advance \$217,206.93 to pay the taxes prior to the 10/31/16 due date. In addition, Midland will review the taxes to determine any appeals for reductions are appropriate.

Insurance:

The Receiver bound acceptable property and liability coverage for Properties for the period 9/29/16-9/29/17; the annual premium paid was \$42,967.

Environmental Reports:

The PSA requires an environmental assessment within six months of taking title to a mortgaged property. Midland obtained Phase I Environmental Site Assessments from Partner Engineering & Science, Inc. dated 6/28/16 for all nine collateral Properties. The reports were reviewed and opined on by McRoberts & Associates, P.C. on 8/18/16. McRoberts found that the mortgaged Properties are in compliance with applicable environmental laws and no additional investigation is recommended. The items below were noted in the reports:

- O&M Plans for ACM recommended for 5000 Capitol Blvd, Moses Lake, and Seattle West. Midland will obtain the recommended O&M Plans post foreclosure.
- 5000 Capitol Blvd: Property is located over deep groundwater which has been impacted by various solvent contaminants attributed to offsite properties. Groundwater monitoring wells are located at and near the property which are being monitored and area-wide groundwater remedial activities are being performed under US EPA oversight as part of the Palermo Well Field Superfund project. The onsite and offsite groundwater impacts are not anticipated to pose a material risk to human health. The Phase I report recommended no other actions, other than continued cooperation with regulatory officials to permit access to the onsite monitoring wells as part of ongoing groundwater remedial activities.

COLLATERAL VALUATION:

	Appraisal (Draft)	JSH BOV	HFF BOV	SS Concluded
"As-Is"	\$32,960,000	\$28,500,000	\$25,360,000	\$26,375,000
"As-Stabilized"	\$39,520,000	\$30,310,000	\$33,750,000	\$32,800,000
Liquidation	\$26,540,000			

Appraised Value:

Updated appraisals on all portfolio Properties were obtained from Butler Burgher Group dated 9/20/16 and are still in draft form. The draft appraisals conclude total as-is value of \$32,960,000 (\$104/sf) and stabilized value of \$39,520,000 (\$124/sf). Several errors and questionable items

were noted in the draft appraisals. Midland anticipates a slight downward adjustments in the values once finalized. The as-is value has decreased from the 1/15/16 Cushman & Wakefield conclusion of \$38,075,000 (\$120/sf). The decrease in value is attributed to occupancy decreases under the management of the Reorganized Debtor from 86.4% to the current occupancy of 78.1% which will further decrease to 64.7% after the Gambling Commission vacates in February 2017 which was factored into the update appraisals.

The appraiser concluded portfolio rents of \$17.50/sf and vacancy of 10%. The majority of the leases are modified gross with the tenant paying janitorial and utility expenses directly and the landlord paying the remaining operating expenses. The appraiser included full janitorial and utility expenses with a reimbursement off-set to income to account for the lease structures. Total operating expenses are \$6.22/sf which is significant reduction from the Receiver's budget of \$11.12/sf primarily due to R&M expenses that include significant HVAC and parking lot repairs. In addition, the Properties are currently carrying significant building engineer costs. These expenses are projected to decrease more in-line with IREM levels once the immediate repairs are corrected. The appraiser concluded a combined NOI of \$3,705,863 and blended cap rate of 9.31%. The stabilized value was reduced by rent loss, TI/LC, and capital costs which total \$5.9MM. TIs range from \$15-\$30/sf depending on the condition of the space and class of the building. The chart below details the appraised values for each property:

CDC Properties Port <u>Property</u>	As of 8/3/16		Allocation	Cur. Allocated	Sep-16						
	<u>Occup</u>	<u>Size (RSF)</u>	<u>%</u>	<u>Loan Amount</u>	<u>As Is Value</u>	<u>PSF</u>	<u>Stab Value</u>	<u>PSF</u>	<u>Stab NOI</u>	<u>Cap Rate</u>	<u>Liquid Value</u>
Attorney General Bldg	0.0%	33,269	10.84%	\$3,583,173	\$1,000,000	\$30	\$3,800,000	\$114	\$360,717	9.50%	\$800,000
Dept of Licensing	100.0%	5,746	1.84%	\$608,383	\$970,000	\$169	\$970,000	\$169	\$82,743	8.50%	\$780,000
Dept of Corrections	100.0%	18,104	4.70%	\$1,554,946	\$2,680,000	\$148	\$2,680,000	\$148	\$227,859	8.50%	\$2,140,000
Dept. of Insur. Comm.	100.0%	46,080	14.11%	\$4,664,838	\$5,780,000	\$125	\$6,000,000	\$130	\$538,000	9.00%	\$4,800,000
Lacey Prudential	87.6%	66,596	22.50%	\$7,437,400	\$6,330,000	\$95	\$7,700,000	\$116	\$703,360	9.50%	\$5,060,000
Lacey DSHS	96.7%	84,966	29.04%	\$9,600,729	\$10,450,000	\$123	\$11,270,000	\$133	\$1,115,196	9.50%	\$8,360,000
Moses Lake-Dept DSHS	0.0%	25,307	5.73%	\$1,893,126	\$650,000	\$26	\$2,000,000	\$79	\$183,503	9.50%	\$520,000
Wenatchee 2	100.0%	28,383	7.77%	\$2,569,485	\$3,600,000	\$127	\$3,600,000	\$127	\$353,411	9.50%	\$2,880,000
Seattle West	<u>100.0%</u>	<u>9,604</u>	<u>3.48%</u>	<u>\$1,149,640</u>	<u>\$1,500,000</u>	<u>\$156</u>	<u>\$1,500,000</u>	<u>\$156</u>	<u>\$137,580</u>	<u>9.00%</u>	<u>\$1,200,000</u>
Total	78.1%	318,055	100.00%	\$33,061,720	\$32,960,000	\$104	\$39,520,000	\$124	\$3,702,369	9.37%	\$26,540,000

Broker Opinions of Value:

JSH Properties, Inc.

Midland obtained a BOV dated 7/29/16 and updated on 10/10/16 from JSH Properties, Inc. who is the current property manager and leasing agent for the Receiver. JSH valued the portfolio at \$28,500,000 (\$90/sf) which is based on individual property valuations. JSH concluded portfolio rents of \$15.74/sf and a 4% vacancy rate; no vacancy reduction was included for the 100% occupied single tenant properties, the broker noted any vacancy loss is captured in the cap rate. JSH based its proforma on the operations and did not include an income set-off for the tenant paid operating expenses under the MG leases. JSH concluded operating expenses of \$8.42/sf than includes significant R&M of \$3.38/sf and engineer costs of \$0.89/sf to conclude NOI of \$2,332,103. The broker capped the NOI at a blended rate of 7.69%. The stabilized value was reduced by rent loss, TI/LC, and capital costs which total \$6.8MM. TIs are projected at \$30/sf. Midland is in discussions with the broker about the high operating expense conclusions, low vacancy rate, and low cap rate projections. The broker expects a 15% discount for a portfolio sale of \$24,225,000 (\$77/sf).

JSH recommends selling the portfolio in several stages:

- 5000 Capitol sell immediately. Property is 100% occupied and the State is pressuring the tenant to move to its campus.

- Seattle West sell immediately. Property is 100% occupied and a geographic outlier in Seattle.
- Moses Lake sell immediately. Property has been vacant for a long time and is a geographic outlier. If no buyer is found include in final portfolio sale.
- Wenatchee 2 sell immediately. Property is 100% occupied and a geographic outlier.
- Remaining properties as a Lacy portfolio or break-up into smaller Lacy portfolios.

HFF

Midland obtained a BOV dated 7/22/16. HFF valued the portfolio at \$25,360,000 (\$80/sf) which is based on individual sales for Moses Lake (\$840K), 5000 Capitol (\$5.45MM) Seattle West (\$1.43MM), Wenatchee 2 (\$2.04MM), and the Lacy portfolio (\$15.6MM). The total concluded NOI is \$3,560,385 capped at a blended 10.55% cap rate and reduced by \$5.4MM in stabilization costs. It is noted that HFF concluded op ex at \$7.08/sf which includes R&M of \$1.69/sf which is more in-line with IREM.

HFF also provided a note sale proposal with an expected note sale trade range of \$23,290,000 - \$26,500,000 with a midpoint of \$24,840,000 (\$78/sf).

Mission Capital

Midland obtained a note sale proposal from Mission Capital on 7/27/16 that concluded Property values of \$30,057,000 (\$94.50/sf) and a note sale trade range of \$26,288,000 - \$28,602,000 with a midpoint of \$27,500,000 (\$84.50/sf).

Special Servicer Value

Midland determined an as-is value of \$26,375,000 (\$83/sf) and stabilized value of \$32,800,000 (\$103/sf) for the portfolio. The Special Servicer value is based on stabilized NOI of \$3,034,591 capped at a blended 9.25% cap rate and reduced by \$6.4MM of stabilization costs and rent loss. Midland concludes in-place rents at the current levels and vacant space at market levels for total \$16.29/sf. Reimbursements are included to off-set the janitorial and utility expenses which are paid directly by the tenants. A 10.2% blended vacancy rate is concluded. Taxes and insurance are per the current invoices and the management fee is 3.5%. Total operating expenses are \$6.65/sf which includes R&M of \$1.75/sf.

RECOMMENDATION:

Conduct nine foreclosure auctions at the scheduled foreclosure sale through the substitute trustee. Counsel has advised that separate sales will be required for each collateralized Property with separate bids for each sale. Midland will bid the current draft appraised value of each Property at the foreclosure sales. Counsel has advised to enter in the top bid for each Property, there is no benefit for a low bid price such as setting deficiencies or any transfer type taxes. Below is the bid schedule:

<u>Property</u>	<u>Property Address</u>	<u>Occup</u>	<u>Size (RSF)</u>	<u>As Is Value</u>
Attorney General Bldg	629 Woodland Sq Loop, Lacey, WA	0.0%	33,269	\$1,000,000
Dept of Licensing	64S Woodland Sq Loop, Lacey, WA	100.0%	5,746	\$970,000
Dept of Corrections	637 Woodland Sq Loop, Lacey, WA	100.0%	18,104	\$2,680,000
Dept. of Insur. Comm.	5000 Capitol Blvd, Tumwater, WA	100.0%	46,080	\$5,780,000
Lacey Prudential	4565 7th Ave, Lacey, WA	87.6%	66,596	\$6,330,000
Lacey DSHS	640 Woodland Sq Loop, Lacey, WA	96.7%	84,966	\$10,450,000
Moses Lake-Dept DSHS	1620 Pioneer Way, Moses Lake, WA	0.0%	25,307	\$650,000
Wenatchee 2	805 S. Mission St., Wenatchee, WA	100.0%	28,383	\$3,600,000
Seattle West	8830 25th Svc, SW, Seattle, WA	<u>100.0%</u>	<u>9,604</u>	<u>\$1,500,000</u>
Total	Totals	78.1%	318,055	\$32,960,000

The Borrower and Guarantor have filed BK and the Guarantor has been discharged of its liability under its guaranty so no further collection action will be taken against the Borrower or Guarantor.

The loan documents will be assigned from the trust to MLMT 2005-MCP1 Washington Office Properties, LLC ("REO Entity") prior to the foreclosure sale. The trust is the sole member and Midland is the manager of the REO Entity.

Recommend to engage JSH Properties, Inc. to manage the Properties. JSH was established in 1986 and is based in Bellevue, WA. JSH provides property management, leasing services, and investments sales in the Puget Sound area of Washington. JSH manages over 15 million sf of retail, office, and industrial space. JSH has been managing the Properties for the Receiver and is currently managing the noted capital projects. The management fee will be 3.25% with a minimum of \$1,200 per property per month.

Recommend to engage JSH Properties, Inc. as leasing agent for the Properties. The leasing commission paid to JSH for new leases will be 5% for the first five years and 2.5% thereafter and 2.5% for renewals. The leasing agent has signed lease renewals with several State agencies and is currently negotiating a new lease with US Healthvest for 66,596 sf which is the best opportunity to increase the portfolio value.

The REO Business Plan is to continue leasing efforts over the next 6 months. The Properties had been severely neglected in the market over the past few years. Midland will attempt to increase the occupancy for a short period in an attempt to add value for the trust including pursuit of the US Healthvest lease. During the hold period, Midland will explore sales of the outlier properties such as 5000 Capitol, Moses Lake, Wenatchee II, and Seattle West. Once leasing efforts are concluded or no longer considered fruitful Midland will engage a broker to sell all of the remaining Properties in the most efficient manner to return value to the trust.

Midland prepared an analysis for an as-is sale of the Properties at the appraiser's \$32,960,000 value. NCF is projected at the current level with a sharp decrease in period 5 due to the Gambling Commission vacating which is a loss of appx \$707,000/yr. However, NCF is projected to gradually increase during the hold period due to operating expense reductions. The analysis includes \$3.85MM for immediate needs and TI/LC costs which are in process by the Receiver. The NPV for this scenario is \$25,013,500 using the note rate as the discount rate with a loss on the A Note estimated at \$4,889,000. As noted in the valuation section, the appraisals are in draft form and will likely have slight downward adjustments. If Midland's concluded value of \$26,375,000 is included as the sales price the NPV decreases to \$19,044,500. If Midland is able

to sell several of the outlier Properties prior to the final portfolio disposition at or above the appraised value then the NPV will increase.

RESOLUTION STRATEGIES:

Strategy	Discount Rate	Net NPV	Go-Forward NPV	Net Loss Est.
Recommended Strategy – Foreclose sell 15 months	5.45%	\$25,013,498	\$26,523,134	\$4,889,382
Alternative 1 – Foreclose Stabilize (42 months)	5.45%	\$26,064,106	\$27,573,734	\$3,022,992
Alternative 1 – Foreclose Stabilize (42 months) Market discount rate	12%	\$21,405,479	\$22,915,116	\$3,022,992
Alternative 2 – Note Sale	5.45%	\$19,793,223	\$21,302,860	\$10,206,999

*The Go-Forward NPVs include \$4.06MM which includes \$3.85MM the receiver has incurred or is in the process of incurring but not yet requested an advance from Midland to pay and \$217K tax payment that is in the process of being advanced.

Alternative 1 (Foreclose – Stabilized Sale)

Midland prepared an analysis of a stabilization scenario with a sale in 42 months at the appraiser's stabilized value of \$39,520,000. Current operations are projected per scenario 1 with continued lease-up and operating expense reduction over another 27 months. TI/LC costs utilized in the appraiser's lease-up is included. The NPV for this scenario is \$26,064,000 with a projected loss of \$3MM. The note rate is considered a below market discount rate for the risk associated with lease-up of the portfolio. The appraiser concluded a 10.5% discount rate for the Lacey Prudential building and HFF concluded a 12% return for the Lacey portfolio. A 12% discount rate reduces the NPV to \$21,405,000. A 6.75% discount rate results in a NPV equivalent to the NPV of the recommend strategy. The risk of stabilizing all of the properties is greater than a 6.75% discount rate so Midland is not recommending a long term stabilization strategy as the NPV would be lower than the recommended strategy.

Alternative 2 (Note Sale)

Midland evaluated a note sale which can be completed in 3 months. This scenario captures current operations including the \$3.85MM costs the Receiver has incurred and a note sale at \$26,170,000 which is the average of the HFF and Mission Capital note sale pricing estimates. The NPV for the note sale alternative is \$19,793,000 with a projected loss of \$10.2MM. Based on the NPV analysis, Midland did not recommend this strategy.

COMPLIANCE:

Flood determinations for all nine properties was obtained on 10/13/16, flood insurance is not required for any of the collateral properties. If any Property is sold at foreclosure auction, first obtain an OFAC for remitter of funds if required.

FAIR VALUE DETERMINATION:

A Note: The Special Servicer established a fair value for the A-Note of \$31,278,745 on 5/5/16. The fair value is hereby revised to \$30,587,000 which is equal to the Go-Forward NPV scenario for the as-is appraised value sale of the Properties plus the \$4.06MM of costs the receiver has or is in the process of incurring but has not yet been advanced by the Master Servicer and the tax advance that is currently in process by the Master Servicer; these costs are considered additional sunk costs.

B Note: The Special Servicer established a Purchase Price for the B-Note of \$3,561,112 on 5/5/16. The Majority Subordinate Certificateholder has an assignable purchase option to

purchase the Defaulted Mortgage Loan from the Trust Fund equal to the Purchase Price of the Defaulted Mortgage Loan (as defined in the PSA), which includes outstanding principal balance, plus a) accrued & unpaid interest on the Loan and on P&I Advances made, b) unreimbursed servicing advances, plus interest on advances, c) reasonable costs and expenses of any enforcement action incurred by the servicer or the Trust Fund regarding any such purchase. The Purchase Price has not substantially changed from the 5/5/16 price so is not required to be updated.

PSA (MLMT 2005-MCP1)

3.09 Realization Upon Defaulted Mortgage Loans; Required Appraisals

3.16 Title to REO Property; REO Accounts

3.17 Management of REO Property

3.18 Sale of Defaulted Mortgage Loans and REO Properties

3.20 Modifications, Waivers, Amendments and Consents

6.11(a) The Controlling Class Representative: The Controlling Class Representative is entitled to advise the Special Servicer with respect to the Trust Mortgage Loans and any REO Properties. The Special Servicer shall not be permitted to take any foreclosure or conversion of ownership of properties securing Trust Specially Serviced Mortgage Loans that have come into default if the Controlling Class Representative has objected in writing within 10 Business Days of being notified in writing. If a written objection has not been received by the Special Servicer within such 10 Business Day period, then the Controlling Class Representative's approval will be deemed to have been given.

PSA (MEZZ CAP 2004 C-2)

3.09 Realization Upon Defaulted Mortgage Loans

3.16 Title to REO Property; REO Account

3.17 Manage of REO Property

3.18 Resolution of Defaulted Mortgage Loans and REO Properties

6.10 The Controlling Class Representative – The CCR is entitle to advise the Servicer with respect to any foreclosure. The CCR shall have 10 Business Days to object or its approval will be deemed to have been given.

INTERCREDITOR AGREEMENT

8(a) Purchase of the A Loan by the B Note Holder: Midland provided the required notice on 2/5/16 and the Trustee for the B Note did not provide notice to exercise the option within the required 30 day period.

16 Modifications; Exercise of Remedies; Servicing: The A Note Holder may in its discretion exercise any rights of the A Note Holder. A Note Holder shall have the sole and exclusive authority with respect to the administration of, and exercise of rights and remedies including instituting any foreclosure action and the B Note Holder shall have n voting, consent, or other rights with respect to the A Note Holder's exercise of its rights and remedies.

LEGAL DISCUSSION:

K&L Gates is engaged as legal counsel and has been engaged through the duration of the Borrower and Guarantor Bankruptcy cases. K&L Gates engaged Schweet Linde as Successor Trustee to file for non-judicial foreclosure. Successor Trustee has issued the Notice of Default and Notice of Sale. K&L Gates will oversee the foreclosure sale and advise the Special Servicer during the REO period.

SUBSTANTIATION:

- A workout with the Reorganized Debtor was not agreed as they did not have capital to invest in the Properties which deteriorated under their control.

- A Receiver has been appointed who is correcting immediate needs and completed several lease renewals to retain existing tenants.
- The Guarantor has been discharged from BK.
- The REO Business Plan is to continue leasing efforts over the near term to determine if additional tenants can be secured to add value to the portfolio before selling the Properties which is supported by the NPV analysis.

AUTHORIZATION:

Action: Request for Approval on Action or Resolution of Asset
(Delegation of Authority D-3a, D-4, D-9a)

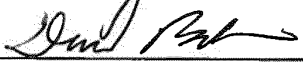
Requested Authority:

1. Assignment of the loan documents from the trust to MLMT 2005-MCP1 Washington Office Properties, LLC, a newly formed SPE with the Trust as the sole member and Midland as the manager, prior to foreclosure.
2. Conduct nine individual foreclosure sales with bid prices at the as-is appraised value pursuant to the current draft appraisals as detailed in the schedule below:

<u>Property</u>	<u>Property Address</u>	<u>Occup</u>	<u>Size (RSF)</u>	<u>As Is Value</u>
Attorney General Bldg	629 Woodland Sq Loop, Lacey, WA	0.0%	33,269	\$1,000,000
Dept of Licensing	645 Woodland Sq Loop, Lacey, WA	100.0%	5,746	\$970,000
Dept of Corrections	637 Woodland Sq Loop, Lacey, WA	100.0%	18,104	\$2,680,000
Dept. of Insur. Comm.	5000 Capitol Blvd, Tumwater, WA	100.0%	46,080	\$5,780,000
Lacey Prudential	456S 7th Ave, Lacey, WA	87.6%	66,596	\$6,330,000
Lacey DSHS	640 Woodland Sq Loop, Lacey, WA	96.7%	84,966	\$10,450,000
Moses Lake-Dept DSHS	1620 Pioneer Way, Moses Lake, WA	0.0%	25,307	\$650,000
Wenatchee 2	805 S. Mission St., Wenatchee, WA	100.0%	28,383	\$3,600,000
Seattle West	8830 25th Sve, SW, Seattle, WA	<u>100.0%</u>	<u>9,604</u>	<u>\$1,500,000</u>
Total	Totals	78.1%	318,055	\$32,960,000

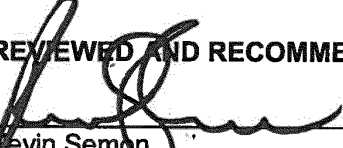
3. In the event the Trust is the successful bidder at the foreclosure sale, enter into Midland's standard Management Agreement with JSH Properties, Inc. with the following conditions:
 - a. Monthly management fee equal to the greater of 3.25% of gross receipts with a minimum of \$1,200 per month per property;
 - b. 6-month term with automatic renewal for same;
 - c. 30-day written termination by either party;
4. In the event the Trust is the successful bidder at the foreclosure sale, enter into a Midland approved leasing agreement with JSH Properties, Inc. with the following conditions:
 - a. 6-month term with automatic renewal for same;
 - b. 30-day written termination by either party;
 - c. Leasing Commission will be 5% for the first five years and 2.5% thereafter for new leases and 2.5% for renewals.
5. Midland will create two separate bank accounts with PNC, one for property operations and one for security deposits. Authorized representatives of Midland and the property management company will be authorized signatories on the accounts.
6. It is hereby requested that the Plurality Subordinate Certificateholder waive its Purchase Option of the Defaulted Mortgage Loan per Section 3.18 of the PSA.

PREPARED AND RECOMMENDED BY:


 10/13/16

David Bornheimer Date
Vice President

REVIEWED AND RECOMMENDED BY:

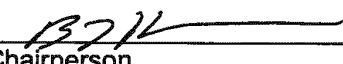
 10/14/16

Kevin Semon Date
Vice President

 10/17/16

David Spotts Date
Senior Vice President

**APPROVED: Under delegation of Authority (D-1, D-5b)
Midland Loan Services, a division of PNC Bank, National Association,
in its capacity as Special Servicer**

 10 OCT 16

Chairperson Date
Asset Review Working Group

APPROVED BY:

**Sutherland Asset I, LLC c/o Waterfall Asset Management
Controlling Class Representative**

By: _____ Date
It's: _____

EXHIBITS:

NPV Analysis
OSAR
Flood Determination
Officer Certificate of Fair Value
Asset Summary Report
Loan Modification Case-Debtor Plan
McRoberts Environmental Risk Assessment Memo
PSA sections
Rent Roll
Map

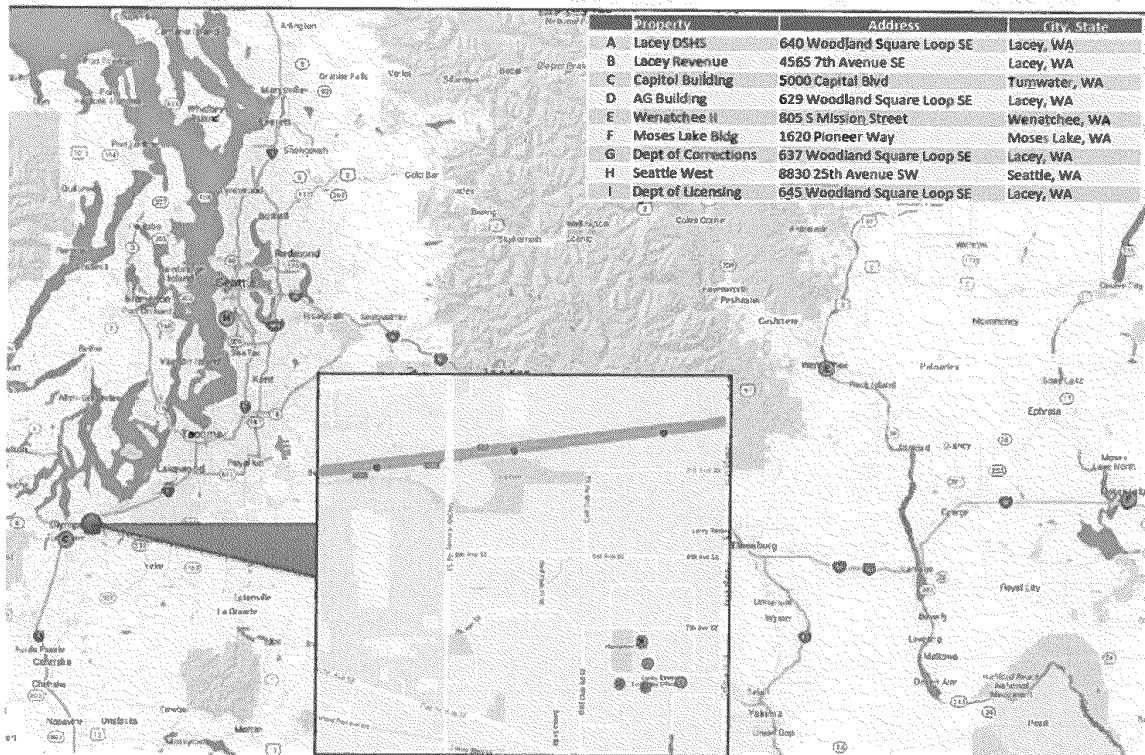


Exhibit 10

HONORABLE BRYAN LYNCH
Chapter 11
HEARING DATE: JANUARY 10, 2017
HEARING TIME: 9:00 AM
COURTROOM: TACOMA, ROOM I
RESPONSE DEADLINE: JANUARY 3, 2018

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

In Re

CDC Properties I, LLC,

Debtors.

No. 11-41010-BDL

**EQUITY FUNDING'S MOTION FOR
RULING THAT CERTAIN ACTIONS BY
THE TRUSTEE AND LENDERS
VIOLATED THIS COURT'S ORDER
DATED NOVEMBER 22, 2011 AND
DEBTOR'S PLAN OF
REORGANIZATION**

COMES NOW creditor Equity Funding/Centrum Financial Services, Inc., hereinafter
"Equity Funding" by and through its attorney of record, Rick J Wathen of COLE WATHEN
LEID & HALL PC and hereby presents their Motion for Court's Ruling that Certain Actions of
the Trustee and the Lenders have Violated this Court's Order Dated November 22, 2011 and
Debtor's Plan of Reorganization.

I. RELIEF REQUESTED

**A. Equity Funding requests this court rule that the Lenders have violated the
plan by making certain payments to the Lenders continuing to the Plan.**

Specifically, Lenders violated the Plan by making payments on the B Note before they
were due, thus creating a cash flow deficit which led to Lenders claims of default. The Lenders
also failed to make payments on the B Note when there was adequate money available to make

1 the required payments. In other words, Lenders violated the Plan thereby creating the very
2 default is now seeks collect millions of dollars in default interest charges and penalties.

3 **B. Equity Funding requests this court rule that the sale of the Debtor's Real**
4 **Property violated this court's order dated November 22, 2011 and violated the**
5 **Debtor's Plan of Reorganization.**

6 The Trustee and the Lenders violated the Plan by selling property in Wenatchee. The
7 Trustee violated the Plan by selling all the remaining properties of CDC.

8 **II. FACTS**

9 **A. CDC Properties I, LLC is the Debtor which owned and managed**
10 **commercial office space throughout Washington.**

11 The Debtor's property consisted of ten office buildings throughout Washington
12 including, Lacey, Tumwater, Seattle, Moses Lake, and Wenatchee. The majority of the office
13 space is occupied by Washington State agencies including the Department of Social and Health
14 Services, the Gambling Commission, the Employment Security Department, and the
15 Department of Licensing. See, Dkt. 55, p.2.

16 On February 10, 2011, the Debtor filed a voluntary Petition under Chapter 11. The
17 Debtor filed its original plan on June 10, 2011. Dkt. 54. Members of the creditor classes
18 thereafter proposed and negotiated with the Debtor certain modifications to the original plan. A
19 modified plan was proposed and accepted by all voting creditors. Dkt. 119, p.2. The Debtor's
20 plan of reorganization was approved by this court pursuant to this court's order dated
21 November 22, 2011. Dkt. 119. Attached hereto as **Exhibit A** is a copy of this court's order and
22 Debtor's Plan of Reorganization.

23 **B. The Lenders, not the Debtor, administered the Plan and in Particular the**
Waterfall Provisions

1 The A Note was originally held by Wells Fargo. The B Note was held by LaSalle
2 Bank. Midland Loan Services, Inc. acted as the special servicer for Wells Fargo and LaSalle.
3 They are collectively referred to as “Lenders.” *Id.* at p.11 and 12.

4 All of the tenant income from the properties was being deposited into a central bank
5 account that was exclusively controlled by the Lenders. Attached hereto as **Exhibit B** is a true
6 and correct copy of the Continued Deposition Transcript of David Bornheimer. Bornheimer
7 Deposition, p. 290, l. 6-14. The Lenders were then to utilize the money in the account and
8 make payments according to the Plan. *Id.* at l. 15-19. The Lenders agree that they controlled
9 the central account and that the Lenders would follow the Plan and make payments according
10 to the Plan. *Id.* at p. 301, l. 8-15.

11 **C. The Lenders fail to follow the Plan.**

12 The Lenders claim the B Note went into default in March of 2013 because of a failure
13 to make a payment. *Id.* at p. 300, l. 2-5. The payment obligation on the B Note was
14 \$27,792.18. See Plan Dkt. 119, page 17, para (b.). Subsequent discovery confirms that there
15 was ample money in the central account to make the payment. The Lenders didn’t make the
16 payment as required under the Plan, and now claim that its own failure in making that payment
17 has triggered millions of dollars in default interest and penalties.

18 The Lenders steadfastly refused to provide to Equity Funding an accounting of the
19 Waterfall provisions required under the Plan. Consequently, Equity Funding obtained an order
20 requiring a 2004 Examination. In response to that order, the Lenders produced what was
21 claimed to be the accounting for the Waterfall provision in the Plan. Attached hereto as
22 **Exhibit C** is a true and correct copy of the Waterfall Allocation produced by the Lenders.
23 Attached hereto as **Exhibit D** is a copy of the Central Account Activity produced by the
Lenders.

1 From the onset, it is apparent that the Lenders were not properly administering the
2 Waterfall. It failed to make payments on the B Note from Dec 2011 – May 2012, and then
3 made a payment of \$222,337.44 in June of 2012. That amount represents 8 payments even
4 though it only covered a 7 month timeframe. See **Exhibit C**, allocation line d. All totaled, the
5 Lenders paid between December 2011 and December 2012, fourteen (14) payments towards
6 the B Note. Only thirteen should have been paid. In the first three months of 2013, Lenders
7 paid six (6) payments towards the B Note. (regular monthly payment and the catch up payment
8 provided for in the Plan.) Under any scenario, the March 2013 payment was made, and, based
9 upon the number of payments made, the April 2013 payment should also have been allocated.

10 The Waterfall allocation prepared by the Lenders purports to show negative cash flow
11 beginning six months post confirmation; June 2012. However, when comparing the Central
12 Account activity report, it becomes apparent that there were ample funds available to pay the B
13 Note. For example, in **Exhibit D**, p.8, March 2013 payment, the amount available in the
14 account to pay the B Note payment was \$300,633.52. The money was available, the Lenders
15 failed to make the payment (to themselves) and based upon that failure, the Lenders declared a
16 default.

17 David Bornheimer testified as follows:

18 Q. It's been your consistent position that the B note went interest default in
19 April of 2013?

20 A. Yes. There was no payment made.

21 Q. But the problem is, if we look at Exhibit 66, which is the money of April
22 2013, the cash balance is not what your attorney reflected on the schedule of \$300,000,
23 but rather the actual money in the account was \$560,000, correct?

A. I see that on the bank statement.

1 Q. Do you know why your attorney took this position on the schedule when
2 there was actually money in the account?

3 Isn't the best thing to look at, sir, I know you're looking at your loan
4 history, here's the money in the account, the bank statement?

5 A. No, I don't think so, because that's a moment in time, whereas, it could
6 be a timing issue as to how much money was available, when funds were posted.

7 Q. I'll get you the next one.

8 If you want to look at the month after, we can clarify the moment in time
9 issue, right?

10 Here's May of 2013. And we can mark it.

11 (Whereupon, Bornheimer Exhibit 69, bank statement was marked, for
12 identification, as of this date.)

13 Q. This is Bornheimer 69. Bornheimer 66 is the March/April period of time,
14 and Bornheimer 69 is, I give you the next month just in case we have an overlap
15 like you just said.

16 The way I read this, sir, the average balance is a half million dollars in
17 the account; do you read it the same way?

18 A. The average balance, yes.

19 **Exhibit B**, David Bornheimer p. 330, l. 8- p. 331, l. 23.

20 So, Mr. Bornheimer testifies that the actual bank balances show an average daily
21 balance in excess of \$500,000, but, the Waterfall analysis provided to Equity Funding shows a
22 negative balance. See **Exhibit C**, March, April, May 2013.

23 These reports establish the Lenders had in its control more than enough cash to make the
B Note payment when it was due but failed to do so.

1 The problem becomes even more obvious in later months. For example, beginning in
2 2014, there was \$87,227.83 left over in the Waterfall allocation. And yet, the Lender didn't
3 make the payment. The same failure continued for the next nine (9) months.

4 **D. Lenders Fail to Properly Allocate "Reletting Reserve"**

5 Generally, the underlying notes and Plan allow for a percentage allocation to be held by
6 the lender in a "reletting reserve" account on a monthly basis. These accumulated funds were
7 to be used by CDC to pay for tenant improvements (TI) and other expenses associated with
8 lease renewals. The contractor retained by CDC to perform these TI improvements was Green
9 Johnny, LLC. Green Johnny had agreed to accept monthly payments. Thus, according to the
10 notes and Plan, Green Johnny, LLC should have been paid from the reletting reserves account.
11 Edmonds Declaration. Instead, the Lenders paid Green Johnny as an "other expense" and
12 simultaneously withheld the funds in the reletting reserve account. Compare **Exhibit C** Line B
13 and 2nd to the last line. Both are entered by the Lender as negative numbers. The effect of this
14 action was to make \$227,417.93 unavailable to pay the B Note. \$227,417.93 is the aggregate
15 total of the payments to Green Johnny as shown on the Waterfall analysis. (Curiously, in the
16 month of Sept 2014, the Lenders paid Green Johnny the amount of the B Note payment of
17 \$27,792.18.)

18 **E. Equity Funding's Claim.**

19 Equity Funding has two allowed claims against the Debtor in the aggregate amount of
20 \$6,000,000. These claims consist of two separate classes of claims under the approved plan.
21 Dkt. 119, p. 6:26-16:6. As part of the plan, Equity Funding/Centrum was required to release
22 deeds of trust and any other encumbrances on the real property. Dkt. 119, p. 14:14-16. The plan
23 required an aggregate total of \$6,000,000 to be deposited into an escrow account. The final
deposit was to be made by November 22, 2016. Dkt. 119, p. 15. The aggregate payment of

1 \$6,000,000 was to be made to Equity Funding by November 22, 2016. See, Dkt. 119, p. 14:3-
2 13.¹

3 **F. Trustee Appointment.**

4 Through a series of corporate entities, the Debtor is owned and managed by Mr.
5 Thomas Price and Mr. Hyun Um. Dkt. 55, p.4:3-4. On August 17, 2010, Mr. Price and Mr. Um
6 were forced into involuntary bankruptcy in their individual capacities. Their bankruptcies were
7 assigned cause nos. 10-46731-PBS and 10-46732-PBS. Thereafter, Mr. Eric Orse was
8 appointed Chapter 11 Trustee on October 2, 2013, 10-46732-PBS Dkt. 620. Mr. Price and Mr.
9 Um owned and operated a company named Prium Companies, LLC which in turn, through a
10 series of corporate entities owned CDC Properties I, LLC, the Debtor in this matter. On August
11 15, 2014, Prium Companies filed a voluntary petition for relief under Chapter 11. Prium was
12 assigned no. 14-44512-PBS. Prium is being managed by Eric Orse who is the court appointed
13 Chapter 11 Trustee in the consolidated bankruptcy cases of Um and Price. Dkt. 81.

14 **G. Eric Orse acknowledges his fiduciary obligations.**

15 The order issued in the Prium matter appointed Mr. Orse as the “management
16 representative.” Ultimately, Mr. Orse continued to operate utilizing the title of Trustee and
17 management representative interchangeably throughout the course of the individual
18 bankruptcies and the corporate bankruptcies. Mr. Orse testified as follows:

19 Q. And you mentioned this role as
20 management representative. What's your
21 understanding of what a management
22 representative is, and how does being a
23 management representative differ from being a
trustee?

¹ The lawsuit between Equity Funding received all rights to the CDC I proceeds as a result of the resolution of its dispute with Bingo in King County Superior Court Cause No. 11-2-09088-4 SEA.

1 A. I'm not sure it differs. The
2 management order that was approved for me as
3 Chapter 11 trustee of Price & Um I believe is
4 the same order that was approved in the Prium
5 bankruptcy for me as management
6 representative. So the same management
7 authority I had as the Chapter 11 trustee in
8 Price & Um was given to me as the management
9 representative in Prium Companies LLC.

10 Q. And would that authority also come
11 with the same fiduciary and other duties that
12 you would have had as the trustee in the
13 bankruptcy?

14 A. Yes.

15 **Exhibit E**, Orse Deposition, page 20:5-21.

16 Shortly thereafter, the Trustee began exercising his acknowledged fiduciary duties as
17 Trustee over CDC, the debtor in this case.

18 **H. The court's order and plan of reorganization only grants conditional
19 authority to sell.**

20 The plan provides in part:

21 "6. The Reorganized Debtor may sell or refinance the Real Property, or any
22 component thereof, at any time *if the proceeds of the sale or refinance are sufficient to pay all*
23 *Allowed Claims in Classes 1-5* and sums otherwise required to be paid under the terms of this
Plan. Any sale of the Real Property shall be: (a) free and clear of all liens and monetary
encumbrances pursuant to section 363 of the Bankruptcy Code, and (b) exempt from excise tax
pursuant to section 1146 of the Bankruptcy Code and section 458-6IA-207 of the Washington
Administrative Code."

24 **Exhibit A**, Dkt. 119, p.20 [Emphasis added.]

25 The court order and plan only authorize the Trustee to sell the assets of CDC *if* there is
26 sufficient proceeds to pay Equity Funding which is the Class I and Class II Creditor.

27 **I. The Trustee and the Lenders Jointly and Cooperatively Violate the Plan.**

28 One of the properties owned by CDC in the portfolio was located at 215 Bridge Street,
29 Wenatchee, WA. Dkt. 119, p.11. By Special Warranty Deed dated January 8, 2016, the

1 Trustee sold 215 Bridge Street, Wenatchee, WA for \$1,250,000.00. Attached hereto as **Exhibit**
2 **F** is a copy of the Special Warranty Deed and Assessors printout showing sales price. On that
3 same date, the Lender received the net sales proceeds. **Exhibit G**, Redacted Loan history
4 produced by Lenders, See Payment received on 01/08/2016. Thus, the Lenders were aware of
5 the sale and presumably participated in the sale in order to release the security interest.

6 **F. Orse sells the *entire* remaining real property of CDC without notice to the**
7 **court or any affected creditor under the plan.**

8 On July 25, 2016, Mr. Orse received an unsolicited offer to purchase CDC. The offer
9 was for a total purchase price of \$100,000.² **Exhibit E**, Orse Deposition, 40:1-10.

10 With respect to the Trustee's due diligence, he testified as follows:

11 Q. And between the offer coming in on
12 July 25 and the acceptance on July 27, what
13 did you do to analyze and consider this offer?

14 A. I didn't do a lot. Again, we were
15 not spending a lot of time on the CDC, and we
16 were in the process of closing the Prium case.

17 Q. Well, when you say, you know, you
18 didn't do a lot, did you review any files or
19 any analyses you had done with respect to the
20 properties?

21 A. No.

22 Q. Did you --

23 A. Because, remember, at this time the
properties were in receivership.

Q. Did you speak to the receiver about
the offer?

A. No.

² Although the ultimate valuation of the portfolio is in dispute, the value of the portfolio is estimated to be worth between \$40-50,000,000.

1 Q. Did you speak to any of the
2 creditors about the offer?

3 A. No.

4 Q. Did you --

5 A. Define creditors, please.

6 Q. Anyone who was owed money by CDC
7 Properties I LLC.

8 A. No.

9 Q. Did you speak to anyone other than
10 counsel regarding this offer?

11 A. The only person I would have
12 possibly talked to was Tom Petramalo, who was
13 my property manager.

14 Q. Did you speak to anyone affiliated
15 with the Noteholder regarding this offer?

16 A. No.

17 Q. Did you solicit other offers?

18 A. No.

19 Q. Did you think about soliciting
20 other offers?

21 A. No.

22 **Exhibit E**, Orse Deposition, 40:8 – 41:21.

23 The Trustee agreed to sell the real property of CDC on July 27, 2016. A formal
purchase agreement was executed by the parties on September 9, 2016. Attached hereto as
Exhibit H is a copy of the purchase agreement. As part of that purchase and sale agreement,
the Trustee represented and warranted:

1 I. **Exhibit H** – Purchase Agreement;

2 J. Declaration of Derek Edmonds;

3 K. Declaration of Rick J Wathen.

4 V. **ARGUMENT**

5 **A. The sale of the CDC assets violates this court's order and plan of**
6 **reorganization.**

7 The plan of reorganization is clear.

8 6. The Reorganized Debtor may sell or refinance the Real Property, or any
9 component thereof, at any time *if the proceeds of the sale or refinance are sufficient to pay all*
10 *Allowed Claims in Classes 1-5* and sums otherwise required to be paid under the terms of this
11 Plan. Any sale of the Real Property shall be: (a) free and clear of all liens and monetary
12 encumbrances pursuant to section 363 of the Bankruptcy Code, and (b) exempt from excise tax
13 pursuant to section 1146 of the Bankruptcy Code and section 458-6IA-207 of the Washington
14 Administrative Code. [Emphasis added.]

15 Simply stated, the Trustee could only sell the property if there was sufficient sales
16 proceeds to satisfy all the creditors. Obviously this was not the case as Equity Funding was
17 owed a \$6,000,000 payment on November 22, 2016. The payment was not made. The Trustee
18 sold the assets of CDC for \$100,000. On its face, the sales price is not sufficient enough to
19 satisfy the \$6,000,000 obligation owed to Equity Funding. As a result, this court should enter
20 an order finding that the sale of the CDC assets violates the court order and plan of
21 reorganization.

22 **B. The Lenders and the Trustee Cooperatively Violate the Plan.**

23 In January of 2016, the Trustee sold 215 Bridge Street, Wenatchee, WA which was one
of the properties owned by CDC. The Trustee executed a Special Warranty Deed transferring
the property on January 8, 2016. For the same reason set forth above, the sale of this property
is a violation of the Plan. Furthermore, the Lenders were knowingly complicit and assisted the
Trustee in violating the Plan by selling the property. The bank statement shows that the

1 Lenders received the net sales proceeds and that no funds were set aside to comply with the
2 Plan, there was no court approval and \$6,000,000 had not be reserved for the benefit of Equity
3 Funding as required under the Plan.

4 **C. The Lender violated the Plan in several other ways.**

5 The Lenders undertook implementation of the plan. The Lenders collected all rents into
6 the central account. The Lenders controlled all funds. The Lenders undertook compliance with
7 the Plan and was solely responsible to see that the Waterfall provisions were met. The Lenders,
8 through its representative David Bornheimer acknowledges these facts and the role the Lenders
9 undertook with respect to the Plan.

10 The Lenders failed to pay the B Note from the onset. The undisputed evidence
11 establishes that there were sufficient funds the central account to make all required B Note
12 payments as they became due. The Waterfall analysis prepared by the Lenders (not
13 considering the actual money in the central account) establishes that funds were available, but
14 the Lenders simply didn't make the payment on the B Note. See **Exhibit C**, January 2014-
15 December 2014. The Lenders simply failed to pay the B Note thus creating the default if now
16 claims has led to millions of dollars in default interest fees, expenses and penalties.

17 Additionally, Lenders failed to comply with the Plan by properly accounting for the
18 "reletting reserve" account. Green Johnny was paid as a monthly expense rather than as a TI
19 expense which should have been paid from the reletting reserve account. The effect of the
20 Lenders violation of the Plan resulted in depriving CDC of in excess of \$227.000 in available
21 cash to support ongoing operations.

22 Equity Funding respectfully request this court find that the Lenders have violated the
23 Plan.

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VI. CONCLUSION

In exchange for a \$6,000,000 payment under the plan, Equity Funding/Centrum agreed to release its deeds of trust on certain property owned by CDC. By giving up its deeds of trust, Equity Funding/Centrum relinquished its security interests in the property in exchange for a court order and plan of reorganization which limited the ability of the Trustee to sell the real property. The only way the Trustee was authorized to sell the property was *if* the proceeds were sufficient enough to satisfy Equity Funding's \$6,000,000 claim. Clearly this did not happen. The Trustee's actions in selling all of CDC's assets is a clear violation of the plan. This court should order that the Trustee's sale of the CDC assets violated the court's order and plan of reorganization. The same conclusion applies to the sale of the Wenatchee building. However, the Lenders also participated in that sale in violation of the Plan. And finally, the Landers failed to pay the B Note, when payments were due, despite the fact that enough funds were available to make the payments.

Dated this 5th day of December, 2017.

COLE | WATHEN | LEID | HALL, P.C.

s/Rick J Wathen

Rick J Wathen, WSBA #25539

Attorneys for Centrum/Equity

303 Battery Street

Seattle, WA 98121

P: 206-622-0494 / F: 206-587-2476

rwathen@cwlhlaw.com

1 **CERTIFICATE OF SERVICE**

2 The undersigned certifies under penalty of perjury under the laws of the State of
3 Washington that on this date I caused to be served in the manner noted below a true and correct
4 copy of the foregoing on the parties mentioned below via ECF Court Filing and electronic
5 notification:

6 **CDC Properties I, LLC**

7 c/o Keven A. Bay
8 Brad A. Goergen
9 Mark D. Northrup
10 kbay@tousley.com
11 plewis@tousley.com
12 kstokes@tousley.com
13 efile@tousley.com
14 brad.goergen@millernash.com
15 mark.northrup@millernash.com
16 dona.purdy@millernash.com

17 John Rizzarda
18 CAIRNCROSS & HEMPELMANN, P.S.
19 524 Second Avenue, Suite 500
20 Seattle, WA 98104-2323

21 **Eric Orse**

22 c/o Diana K. Carey
23 Karr Tuttle Campbell
701 Fifth Ave Ste 3300
Seattle, WA 98104
dcarey@karrtuttle.com

24 **United State Trustee**

25 Hillary Bramwell Mohr
26 USTPRegion18.SE.ECF@usdoj.gov
27 Hilary.b.mohr@usdoj.gov
28 Tara.Maurer@usdoj.gov
29 young-mi.petteys@usdoj.gov
30 martha.a.vandraanen@usdoj.gov

31 **Mariners Portfolio LLC**

32 **Olympia Office LLC**
33 **Seahawk Portfolio LLC**
34 **WA Portfolio LLC**
35 c/o Donald A. Bailey
36 donald.bailey@shaferbailey.com

1 **MLMT 2005-MCP1 Washington Office Properties LLC**

c/o Theodore A Cohen

2 Alan M. Feld

tcohen@sheppardmullin.com

3 amontoya@sheppardmullin.com

afeld@sheppardmullin.com

4 **Washington State Dept of General Administration**

5 c/o Brian Faller

brianf@atg.wa.gov beckym@atg.wa.gov

6 **Bingo Investments LLC**

7 c/o R. Bruce Johnston

bruce@rbrucejohnston.com

8 **Midland Loan Services, Inc.**

9 c/o Brian L Lewis

brian.lewis@klgates.com

10 bankruptcyecf@klgates.com

11 **Wells Fargo Bank**

c/o Brian L Lewis

12 brian.lewis@klgates.com

bankruptcyecf@klgates.com

13 **Hyun J Um and Jin S. Um**

14 c/o J. Todd Tracy

todd@thetracylawgroup.com

15 ecf@thetracylawgroup.com

16 **Thomas W. and Patricia A. Price**

c/o J. Todd Tracy

17 todd@thetracylawgroup.com

ecf@thetracylawgroup.com

18 **Debtor CDC Properties I LLC**

19 c/o Brad A Goergen

brad.goergen@millernash.com

21 DATED at Seattle, Washington, this 5th day of December, 2017.

22 s/Sonia Chakalo
23 Sonia Chakalo, Legal Assistant

HONORABLE BRYAN LYNCH
Chapter 11
HEARING DATE: JANUARY 10, 2018
HEARING TIME: 9:00 AM
COURTROOM: TACOMA, ROOM I
RESPONSE DEADLINE: JANUARY 3, 2018

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

In Re

CDC Properties I, LLC,

Debtors.

No. 11-41010-BDL

DECLARATION OF RICK WATHEN

I, Rick J Wathen, make the following declaration certified to be true under penalty of perjury pursuant to RCW 9A.72.085:

1. I am over the age of eighteen and am competent to testify herein.
2. The information contained herein is based upon my personal knowledge.
3. I am one of the attorneys for Debtors CDC Properties I, LLC.
4. Attached hereto as **Exhibit A** is a true and correct copy of the Order Confirming Plan.
5. Attached hereto as **Exhibit B** is a true and correct copy of the Continued Deposition Transcript of David Bornheimer.
6. Attached hereto as **Exhibit C** is a true and correct copy of the Waterfall

Allocation Produced by the Lenders.
Consolidated No. 17-2-03914-4

DECLARATION OF RICK WATHEN - 1

COLE | WATHEN | LEID | HALL, P.C.
303 BATTERY STREET
SEATTLE, WA 98121-1419

7. Attached hereto as **Exhibit D** is a true and correct copy of the Central Account Activity Produced by the Lenders.

8. Attached hereto as **Exhibit E** is a true and correct copy of the Deposition Transcript of Eric Orse.

9. Attached hereto as **Exhibit F** is a true and correct copy of the Special Warranty Deed.

10. Attached hereto as **Exhibit G** is a true and correct copy of the Redacted Loan History.

11. Attached hereto as **Exhibit H** is a true and correct copy of the Purchase Agreement.

**I DECLARE UNDER PENALTY OF PERJURY OF THE LAWS OF THE
STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO
THE BEST OF MY KNOWLEDGE.**

DATED this 5th day of December, 2017, at Seattle, Washington.

COLE | WATHEN | LEID | HALL, P.C.

/s/ Rick J Wathen
Rick J Wathen, WSBA#25539

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on this date I caused to be served in the manner noted below a true and correct copy of the foregoing on the parties mentioned below via ECF Court Filing and electronic notification:

CDC Properties I, LLC

c/o Keven A. Bay
Brad A. Goergen
Mark D. Northrup
kbay@tousley.com
plewis@tousley.com
kstokes@tousley.com
efile@tousley.com
brad.goergen@millernash.com
mark.northrup@millernash.com
dona.purdy@millernash.com

John Rizzardi
CAIRNCROSS & HEMPELMANN, P.S.
524 Second Avenue, Suite 500
Seattle, WA 98104-2323

Eric Orse

c/o Diana K. Carey
Karr Tuttle Campbell
701 Fifth Ave Ste 3300
Seattle, WA 98104
dcarey@karrtuttle.com

United State Trustee

Hillary Bramwell Mohr
USTPRegion18.SE.ECF@usdoj.gov
Hilary.b.mohr@usdoj.gov
Tara.Maurer@usdoj.gov
young-mi.petteys@usdoj.gov
martha.a.vandraanen@usdoj.gov

Consolidated No. 17-2-03914-4

DECLARATION OF RICK WATHEN - 3

COLE | WATHEN | LEID | HALL, P.C.
303 BATTERY STREET
SEATTLE, WA 98121-1419

1 **Mariners Portfolio LLC**
2 **Olympia Office LLC**
3 **Seahawk Portfolio LLC**
4 **WA Portfolio LLC**

5 c/o Donald A. Bailey
6 donald.bailey@shaferbailey.com

7 **MLMT 2005-MCP1 Washington Office Properties LLC**

8 c/o Theodore A Cohen
9 Alan M. Feld
10 tcohen@sheppardmullin.com
11 amontoya@sheppardmullin.com
12 afeld@sheppardmullin.com

13 **Washington State Dept of General Administration**

14 c/o Brian Faller
15 brianf@atg.wa.gov beckym@atg.wa.gov

16 **Bingo Investments LLC**

17 c/o R. Bruce Johnston
18 bruce@rbrucejohnston.com

19 **Midland Loan Services, Inc.**

20 c/o Brian L Lewis
21 brian.lewis@klgates.com
22 bankruptcyecf@klgates.com

23 **Wells Fargo Bank**

24 c/o Brian L Lewis
25 brian.lewis@klgates.com
26 bankruptcyecf@klgates.com

27 **Hyun J Um and Jin S. Um**

c/o J. Todd Tracy
todd@thetracylawgroup.com
ecf@thetracylawgroup.com

Thomas W. and Patricia A. Price

c/o J. Todd Tracy
todd@thetracylawgroup.com
ecf@thetracylawgroup.com

Consolidated No. 17-2-03914-4

DECLARATION OF RICK WATHEN - 4

COLE | WATHEN | LEID | HALL, P.C.
303 BATTERY STREET
SEATTLE, WA 98121-1419

1 **Debtor CDC Properties I LLC**
2 c/o Brad A Goergen
3 brad.goergen@millernash.com

4 DATED at Seattle, Washington, this 5th day of December, 2017.

6 s/Sonia Chakalo

7 Sonia Chakalo, Legal Assistant
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Entered on Docket November 22, 2011

Below is the Order of the Court.



Paul B. Snyder

Paul B. Snyder
U.S. Bankruptcy Judge

(Dated as of Entered on Docket date above)

The Honorable Paul B. Snyder
Chapter 11
Hearing Date: November 21, 2011
Hearing Time: 9:00 a.m.
Response Date: November 14, 2011
(or as extended by consent
of the Debtor)

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

In Re:

No. 11-41010

CDC Properties I, LLC

TIN: 76-0766443

Debtor.

ORDER CONFIRMING PLAN

THIS MATTER having come on for hearing on November 21, 2011 before the undersigned Judge on confirmation of the Debtor's Plan of Reorganization originally dated as of ORDER CONFIRMING PLAN -- 1

No. 11-41010
m43291-1670189.doc

GRAHAM & DUNN PC
Pier 70, 2801 Alaskan Way ~ Suite 300
Seattle, Washington 98121-1128
(206) 624-8300/Fax: (206) 340-9599

Case 11-41010-PBS Doc 119 Filed 11/22/11 Ent. 11/22/11 07:51:16 Pg

EXHIBIT

A

1 June 10, 2011 and as modified (the "Plan"); and the Court previously having entered an
2 Order Approving Disclosure Statement and Setting Hearing on Confirmation (the "Order"); and
3 a copy of said Order and the Disclosure Statement and Plan having been transmitted to the
4 holders of claims and interests; and the Debtor having appeared by and through its counsel,
5 Graham & Dunn PC; and the Debtor having submitted evidence in support of confirmation of the
6 Plan via the Declaration of Thomas W. Price in Support of Plan Confirmation (Dkt. #117); and
7 the Court having considered the files, records, and testimony presented in connection with the
8 Plan, the Court makes the following findings:

9
10 Findings

- 11 1. This bankruptcy was commenced on February 10, 2011.
- 12 2. The Debtor filed its Plan on June 10, 2011 (Dkt. #54; the "Original Plan") and the
13 Original Plan was subsequently transmitted to all creditors and parties in interest as an
14 attachment to the Court-approved Debtor's Disclosure Statement (Dkt. #55). Members of
15 creditor Classes 1-5 thereafter proposed and negotiated with the Debtor certain modifications to
16 the Original Plan. All creditors whose treatment under the Plan has been modified from the
17 Original Plan provisions have fully participated in the modification process. The modified Plan,
18 as accepted by all voting creditors, is dated November 21, 2011 and is attached hereto as Exhibit
19 A (the "Plan").
- 20 3. Notice of this hearing on confirmation was given to creditors and parties in interest in
21 accordance with Federal Rule of Bankruptcy Procedure 2002 and notice of this proceeding was
22 otherwise adequate.
- 23 4. The Plan complies with the applicable provisions of Chapter 11 of the Code.
- 24 5. The proponent of the Plan complies with the applicable provisions of the Code.

25 ORDER CONFIRMING PLAN -- 2

26 No. 11-41010
m43291-1670189.doc

GRAHAM & DUNN PC
Pier 70, 2801 Alaskan Way ~ Suite 300
Seattle, Washington 98121-1128
(206) 624-8300/Fax: (206) 340-9599

1 6. The Plan has been proposed in good faith and not by any means forbidden by law.

2 7. A. Any payment made or promised by the Debtor for services or for costs and
3 expenses in, or in connection with, the bankruptcy case, or in connection with the Plan and
4 incident to the case, has been disclosed to the Court; and
5

6 B. Any such payment made before confirmation of the Plan is reasonable; or if such
7 payment is to be fixed after confirmation of the Plan, such payment is subject to the approval of
8 the Court as reasonable.

9 8. A. The proponent of the Plan has disclosed the identity and affiliations of any
10 individuals proposed to serve, after confirmation of the Plan, as a director, officer, or voting
11 trustee of the Debtor, an affiliate of the Debtor participating in a joint plan with the Debtor, or a
12 successor to the Debtor under the Plan; and the appointment to, or continuance in, such office of
13 such individual is consistent with the interests of creditors and equity security holders and with
14 public policy; and
15

16 B. The proponent of the Plan has disclosed the identity of any insider that will be
17 employed or retained by the reorganized Debtor, and the nature of any compensation for such
18 insiders.
19

20 9. There are no regulatory commissions with jurisdiction, after confirmation of the Plan,
21 over the rates of the Debtor.

22 10. With respect to each impaired class of creditors or interests:
23

24 A. Each holder of an allowed claim or interest of such class has accepted the Plan; or
25 will receive or retain under the Plan on account of such claim or interest property of a value, as of
26 the effective date of the Plan, that is not less than the amount that that holder would so receive or

ORDER CONFIRMING PLAN -- 3

No. 11-41010
m43291-1670189 doc

GRAHAM & DUNN PC
Pier 70, 2801 Alaskan Way ~ Suite 300
Seattle, Washington 98121-1128
(206) 624-8300/Fax: (206) 340-9599

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1 retain if the Debtor were liquidated under Chapter 7; or

2 B. If §1111(b)(2) of the Code applies to the claims of such class, each holder of a
3 claim of such class will receive or retain under the Plan on account of such claim property of a
4 value, as of the effective date of the Plan, that is not less than the value of such creditor's interest
5 in the estate's interest in the property that secures such claims.
6

7 11. Except to the extent that the holder of a particular claim has agreed to a different
8 treatment of such claim, the Plan provides that:

9 A With respect to a claim of a kind specified in §§507(a)(1) or 507(a)(2) of the
10 Code, on the effective date of the Plan, the holder of such claim will receive on account of such
11 claim cash equal to the allowed amount of such claim, unless otherwise mutually agreed;
12

13 B. With respect to a class of claims of the kind specified in §§507(a)(3)-(7) of the
14 Code, each holder of a claim of such class will receive, if such class has accepted the Plan,
15 deferred cash payments of a value, as of the effective date of the Plan, equal to the allowed
16 amount of such claim; or, if such class has not accepted the Plan, cash on the effective date of the
17 Plan equal to the allowed amount of such claims; and
18

19 C. With respect to a claim of a kind specified in §507(a)(8) of the Code, the holder of
20 such claim will receive on account of such claim deferred cash payments over a period not
21 exceeding five years after the date of assessment of such claim, or a value, as of the effective date
22 of the Plan, equal to the allowed amount of such claim.
23

24 12. At least one impaired class of claims has accepted the Plan, determined without
25 including any acceptance of the Plan by an insider holding the claim of such class.
26

ORDER CONFIRMING PLAN -- 4

No. 11-41010
m43291-1670189.doc

GRAHAM & DUNN PC
Pier 70, 2801 Alaskan Way ~ Suite 300
Seattle, Washington 98121-1128
(206) 624-8300/Fax: (206) 340-9599

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1 13. Confirmation of the Plan is not likely to be followed by the liquidation, or the need
2 for further financial reorganization of the debtor or any successor of the debtor under the Plan
3 unless its liquidation or reorganization is proposed in the Plan.
4

5 14. All fees payable under §1930 of title 28, as determined by the Court at the hearing on
6 confirmation of the Plan, have been paid or the Plan provides for the payment of all such fees on
7 the effective date of the Plan.

8 15. The Plan satisfies the confirmation requirements of Bankruptcy Code §1129(a).

9 16. All objections to Plan confirmation (if any) have either been withdrawn or overruled.
10

11 Order

12 BASED ON THE FOREGOING FINDINGS, now therefore it is

13 ORDERED as follows:

14 1. The Debtor's Plan of Reorganization, a copy of which is attached hereto as
15 Exhibit A and incorporated herein by this reference, is hereby confirmed and the Debtor is
16 authorized and directed to carry out the terms and intent of said Plan.

17 2. The Reorganized Debtor may prepare and execute any documents necessary to
18 accomplish the purposes and intent of the Plan and the Reorganized Debtor and all affected
19 creditors are authorized and instructed to cooperate in the prompt execution of such documents.

20 3. If inconsistent with the terms of the Plan, the provisions of this Order shall
21 control.

22 //end of order//

23 Presented by:
24 GRAHAM & DUNN PC
25 By /s/Mark D. Northrup
26 Mark D. Northrup
WSBA# 16947
Email: mnorthrup@grahamdunn.com
Attorneys for the Debtor

ORDER CONFIRMING PLAN -- 5

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EXHIBIT A

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The Honorable Paul B. Snyder
Chapter 11
Hearing Date: November 21, 2011
Hearing Time: 9:00 a.m.
Response Date: November 14, 2011
(or as extended by consent
of the Debtor)

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

In Re:) No. 11-41010-PBS
CDC Properties I, LLC)
TIN: 76-0766443) DEBTOR'S PLAN OF REORGANIZATION
Debtor.)

Debtor CDC Properties I, LLC ("Debtor") proposes the following Debtor's Plan of Reorganization (the "Plan of Reorganization") pursuant to Chapter 11 of the Bankruptcy Code.

I. DISCLOSURE STATEMENT

The Debtor has filed the Debtor's Disclosure Statement with this Plan of Reorganization pursuant to section 1125 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 3016(b). This Plan of Reorganization is being disseminated to creditors and equity security holders for vote after Bankruptcy Court approval of the information in the Debtor's Disclosure Statement. The Debtor's Disclosure Statement contains useful information to assist creditors and equity security holders in making an informed judgment about how to vote on this Plan of Reorganization. Please read the Debtor's Disclosure Statement with care in evaluating the impact of this Plan of Reorganization upon your claim or interest.

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II. DEFINITIONS

A term used in this Plan of Reorganization that is not defined below and is used in the Bankruptcy Code shall have the meaning ascribed in the Bankruptcy Code. The following terms when used in this Plan of Reorganization have the meanings specified below.

Administrative Expense: An expense of administration allowed under section 503(b) of the Bankruptcy Code and any fees and charges due under 28 U.S.C. § 1930.

Allowed Claim: Any claim either:

1. in the amount and priority classification set forth in the proof of such claim that has been timely filed unless:

a. such claim has been objected to or is objected to after the Confirmation Date, in which case such claim shall be allowed only in the amount and classification that is authorized by the Bankruptcy Court, or

b. such claim has been paid, withdrawn, waived or otherwise deemed satisfied in full; or

2. if a proof of such claim has not been timely filed, in the amount and priority classification listed by the Debtor in its bankruptcy schedules D, E and F as amended and filed with the Bankruptcy Court, unless:

a. such claim is listed as disputed, contingent and/or unliquidated,

b. such claim has been objected to or is objected to after the Confirmation Date (a "Disputed Claim"), in which case such claim shall be allowed only in the amount and classification that is authorized by the Bankruptcy Court, or

c. such claim has been paid, withdrawn, waived or otherwise deemed satisfied in full.

Anniversary Date: A date which is exactly one calendar year after the Confirmation Date (the first Anniversary Date), exactly two calendar years after the Confirmation Date (the second Anniversary Date), and so forth provided that if the Anniversary

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1 Date falls on a weekend or holiday, the Anniversary Date shall be deemed the first business date
2 thereafter.

3 Assets: Every conceivable asset of the Debtor, all property of the Debtor's bankruptcy
4 estates under section 541 of the Bankruptcy Code, and all claims that prior to the Effective Date
5 could have been asserted and/or were asserted by the Debtor.

6 Bankruptcy Code: The Bankruptcy Code as amended and set forth in Title 11 of the
7 United States Code.

8 Bankruptcy Court: The United States Bankruptcy Court for the Western District of
9 Washington at Tacoma, before which the Case is pending, or any other court exercising
10 jurisdiction over the Case in the future.

11 Bankruptcy Rules: The Federal Rules of Bankruptcy Procedure as supplemented by the
12 Local Bankruptcy Rules for the Western District of Washington, and any other local rules
13 applicable to the Bankruptcy Court.

14 Bingo Investments, LLC: A Washington limited liability company that has filed a claim
15 in the Case (the "Bingo Claim"), including a claim to any and all distributions issued by the
16 Reorganized Debtor in payment of the Equity Funding Claims.

17 Bingo Lawsuit: That certain pending lawsuit styled *Bingo Investments LLC v. Centrum*
18 *Financial Services, Inc.*, Superior Court of King County, Washington, Case No. 11-2-09088-4
19 SEA.

20 Case: The Debtor's bankruptcy case that is presently pending in the Bankruptcy Court
21 under Bankruptcy Case No. 10-41010.

22 Cash Management Agreement: Those agreements and provisions collectively included in
23 Article V of the Wells Fargo/LaSalle Deed of Trust.

24 Class: A class of claims or interests as defined in Section III of the Plan.

25 Confirmation Date: The date that the Confirmation Order is entered on the docket in the
26 Case.

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1 Confirmation Order: The order of the Bankruptcy Court confirming the Plan.

2 Debtor: CDC Properties I, LLC.

3 Effective Date: The first business day: (i) at least fourteen days after the entry of the
4 Confirmation Order; and (ii) after the satisfaction of any conditions precedent to the Plan, if any,
5 or the Debtor's waiver of such conditions precedent.

6 Equity Funding: Equity Funding, LLC, a limited liability company organized under the
7 laws of the state of Washington, and its manager and sole owner, Centrum Financial Services,
8 Inc ("Centrum").

9 Equity Funding Claim 1: All claims of Equity Funding against the Debtor and/or in the
10 Case relating to a Promissory Note dated March 28, 2008, in the original principal amount of
11 \$1,200,000.00, including all subsequent amendments, modifications, and restatements thereof.

12 Equity Funding Claim 2: All claims of Equity Funding and/or Centrum, that are alleged
13 to be secured by the Real Property and that are alleged to have been acquired through: (i) that
14 certain Loan Transfer and Membership Purchase Agreement dated November 4, 2008, between
15 Prium Companies, L.L.C., Hyun J. Um, Thomas W. Price, Bingo Investments, LLC, and David
16 Bingham; and (ii) that certain Agreement dated November 5, 2008, between the Debtor, CDC
17 Properties II, LLC, Prium Development Company, L.L.C., Rock Pointe Holdings, LLC, Centrum
18 Financial Services, Inc., allegedly Centurion Properties III, LLC, and Bingo Investments, LLC.
19 The Equity Funding Claim 2 is a subject of the Bingo Lawsuit.

20 Equity Funding Claims: Equity Funding Claim 1 and Equity Funding Claim 2.

21 Equity Interests: The membership interests in the Debtor.

22 Escrow Account: A bank account established by the Reorganized Debtor at an institution
23 approved for deposits by the Bankruptcy Court, to hold the disputed proceeds payable in respect
24 of the Equity Funding Claims 1 and 2, until (i) an order of the Bankruptcy Court directing
25 distribution of all or part thereof, (ii) a final order in the Bingo Lawsuit designating the
26

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1 ownership and calling for the distribution of the funds, or (iii) a final settlement agreement
2 between Equity Funding and Bingo Investments, LLC providing for the distribution of the funds.

3 LaSalle Bank: LaSalle Bank, N.A., as Trustee, Mezz Cap Commercial Mortgage 2004-
4 C2, acting by and through Special Servicer Midland Loan Services.

5 LaSalle Bank Claim: All claims of LaSalle Bank against the Debtor and/or in the Case,
6 including the claims secured by a deed of trust and assignment of rents encumbering the Real
7 Property.

8 Manager: CDC Acquisition Company I, LLC, the sole equity member of the Debtor.

9 Midland: Midland Loan Services, Inc., a division of PNC Bank, N.A., as special servicer
10 with respect to debt instruments secured by the Real Property.

11 Miscellaneous Reserve Account: That reserve account established by letter dated April
12 28, 2006, sent by Midland to Prium Companies.

13 Petition Date: February 10, 2011.

14 Plan: This Plan of Reorganization in its present form or as it may be amended or modified
15 in accordance with the Bankruptcy Code or order of the Bankruptcy Court.

16 Real Property: All real property owned by the Debtors, which is located at:

- 17 1. 629 Woodland Square Loop, Lacey, Washington;
- 18 2. 637 Woodland Square Loop, Lacey, Washington;
- 19 3. 645 Woodland Square Loop, Lacey, Washington;
- 20 4. 4565 7th Avenue SE, Lacey, Washington;
- 21 5. 640 Woodland Square Loop, Lacey, Washington;
- 22 6. 5000 Capitol Boulevard, Tumwater, Washington;
- 23 7. 8830 25th Avenue SW, Seattle, Washington;
- 24 8. 1620 Pioneer Way, Moses Lake, Washington;
- 25 9. 215 Bridge Street, Wenatchee, Washington; and
- 26 10. 805 S. Mission Street, Wenatchee, Washington.

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1 Reletting Reserve Account: The account established pursuant to Section 5.11 of the
2 Wells Fargo/LaSalle Deed of Trust.

3 Rents: All rents and other reimbursements payable to the Debtor and arising from the
4 Real Property.

5 Reorganized Debtor: The Debtor, or any successor thereto by merger, consolidation, or
6 otherwise, on and after the Effective Date.

7 Replacement Reserve Account: The account established pursuant to Section 5.08 of the
8 Wells Fargo/LaSalle Deed of Trust.

9 Reserve Accounts: The Miscellaneous Reserve Account, the Reletting Reserve Account,
10 and the Replacement Reserve Account, collectively.

11 Tenant Leases: All leases with tenants occupying space at the Real Property on the
12 Effective Date, including the leases identified on Exhibit A attached hereto.

13 Unsecured Claim: A claim against the Debtor that is not the Equity Funding Claim 1,
14 Equity Funding Claim 2, Wells Fargo Claim, LaSalle Bank Claim or an Administrative Expense.

15 Wells Fargo: Wells Fargo Bank, N.A., in its capacity as trustee for registered holders of
16 Merrill Lynch Mortgage Trust 2005-MCP1 Commercial Pass-Through Certificates, Series 2005-
17 MCP1, acting by and through Special Servicer Midland Loan Services.

18 Wells Fargo Claim: All claims of Wells Fargo against the Debtor and/or in the Case,
19 including the claims secured by a deed of trust and assignment of rents encumbering the Real
20 Property.

21 Wells Fargo/LaSalle Deed of Trust: Those deeds of trust collectively executed on or
22 about September 29, 2004 by the Debtor in order to secure the Wells Fargo Claim and the
23 LaSalle Bank Claim.

24 III. CLASSIFICATION OF CLAIMS AND INTERESTS

25 The claims and interests are classified as follows:

26 Class 1: Equity Funding Claim 1.

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1 Subordinated Payment Schedule below, satisfied from the excess cash flow generated by the Real
2 Property.

3 c.) Payments on the Equity Funding Claims shall occur in accordance with the "Waterfall
4 Provisions" set forth below, in the section denominated Provisions Applicable to all Plan
5 Payments. All payments shall be made to the Escrow Account, the distribution of which shall
6 not occur until: (i) entry of an order of the Bankruptcy Court directing distribution of all or part
7 thereof; (ii) entry of a final order in the Bingo Lawsuit designating the ownership and calling for
8 the distribution of the funds; or (iii) a final settlement agreement between Equity Funding and
9 Bingo Investments, LLC providing for the distribution of the funds. Nothing in this Plan shall
10 alter, limit or affect the right of either Bingo Investments, LLC or Equity Funding to pursue
11 claims against, or to obtain recoveries from, the other, based on a final ruling of the court issued
12 in the Bingo Lawsuit, or otherwise in proceedings outside of this Case and any adversary
13 proceeding filed in connection with this Case.

14 d.) On or before the Effective Date, all of the existing Equity Funding/Centrum deeds of
15 trust and any other encumbrances on the Real Property shall be released at the expense of the
16 Debtor.

17 e.) The following minimum, cumulative payments shall be made in respect of the Equity
18 Funding Claims, and in compliance with the "waterfall" provisions set forth below (the
19 "Subordinated Payment Schedule"):

20 (1). At least \$75,000 delivered in good funds to the Escrow Account or as
21 directed by final order or final settlement of the Bingo Lawsuit by the first Anniversary Date;

22 (2). At least \$500,000 delivered in good funds to the Escrow Account or as
23 directed by final order or final settlement of the Bingo Lawsuit by the second Anniversary Date;

24 (3). At least \$1,150,000 delivered in good funds to the Escrow Account or as
25 directed by final order or final settlement of the Bingo Lawsuit by the third Anniversary Date;
26

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1 (4). At least \$1,650,000 delivered in good funds to the Escrow Account or as
2 directed by final order or final settlement of the Bingo Lawsuit by the fourth Anniversary Date

3 (5). At least \$2,250,000.00 delivered in good funds to the Escrow Account or as
4 directed by final order or final settlement of the Bingo Lawsuit by the fifth Anniversary Date.

5 Nothing in the foregoing Subordinated Payment Schedule shall obligate Midland to
6 disburse to the Reorganized Debtor (or any other person) funds from the accounts described in
7 the Cash Management Agreement until such time as the items described in the Waterfall
8 Provisions (a) through (g) below have been paid in full.

9 In the event the Reorganized Debtor's fails to satisfy the minimum cumulative payments
10 provided above, or if such minimum cumulative payments have been made contrary to the
11 "waterfall" provisions set forth below, Equity Funding and/or Bingo Investments (as their
12 interests may appear at the time of the alleged default or as designated by final order, or final
13 settlement of the Bingo Lawsuit) shall provide written notice of default to the Reorganized
14 Debtor c/o Graham & Dunn, ATTN: Mark Northrup, and to such address for the Reorganized
15 Debtor as the Reorganized Debtor may specify in writing to Equity Funding and Bingo, or if no
16 such address is so specified, to the last known address of the Reorganized Debtor. The
17 Reorganized Debtor shall in turn provide copies of any such notice to Wells Fargo and LaSalle
18 Bank, via Midland, c/o K&L Gates, LLP ATTN: Brian L. Lewis and at such address Wells
19 Fargo, LaSalle Bank and/or Midland may specify in writing to the Reorganized Debtor, or if no
20 such address is so specified, to the last known address for Midland. The Reorganized Debtor
21 shall have 30 days in which to cure such default. Upon the failure of the Reorganized Debtor
22 timely to effect such cure, time being of the essence, Equity Funding and/or Bingo Investments
23 (as their interests may appear at the time of the alleged default or as designated by final order or
24 final settlement of the Bingo Lawsuit) shall be entitled to pursue all remedies available under
25 state, federal or other applicable law, subject to the liens securing the Class 3 and Class 4 Claims,
26 the terms of which shall remain as set forth in the Plan. Jurisdiction to hear any dispute over the

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1 existence of a default or cure under this section shall be exclusively reserved to the Bankruptcy
2 Court following and notwithstanding confirmation of the Plan and, if necessary, the Case shall be
3 reopened upon ex parte motion of either the Reorganized Debtor or Equity Funding or Bingo
4 Investments (as their interests may appear at the time of the alleged default or as designated by
5 final order or final settlement of the Bingo Lawsuit), in order to consider any such motion or
6 dispute.

7 Class 3: The Wells Fargo Claim will be treated as follows:

8 a.) The Wells Fargo Claim will continue to be controlled by the existing loan documents
9 applicable to the Wells Fargo Claim, except as otherwise provided in this Plan. The Wells Fargo
10 Claim shall be fixed at \$36,311,190.93 and will continue to be serviced according to the existing
11 loan documents.

12 b.) On the Effective Date, current outstanding advances and expenses of \$160,647.87,
13 plus the loan extension fee (below), plus any costs of Plan confirmation assessed against the
14 Debtor's estate and paid from income from the Real Property, will be paid from the
15 Miscellaneous Reserve Account.

16 c.) The current loan maturity date of October 1, 2014 will be (and hereby is) extended for
17 thirty-six (36) months, to a new maturity date of October 17, 2017.

18 d.) A fee of one percent (1%) of the outstanding loan balance will be paid from the
19 Miscellaneous Reserve Account Balance on the Effective Date.

20 e.) The Wells Fargo Claim will continue to be secured by a first-position mortgage lien
21 on the Debtor's Real Property.

22 f.) The Reorganized Debtor shall have the right to prepay the Wells Fargo Claim at par,
23 in full or in part, during the extension period (i.e., after October 30, 2014); provided, however,
24 that if prepaid, the LaSalle Bank Claim must also be prepaid.

25 Class 4: The LaSalle Bank Claim will be treated as follows:
26

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1 a.) The LaSalle Bank Claim will continue to be controlled by the existing loan
2 documents applicable to the LaSalle Bank Claim, except as otherwise provided in this Plan. The
3 LaSalle Bank Claim will be fixed at \$2,533,530.41, and will be serviced according to the terms
4 of the existing loan documents.

5 b.) Outstanding accrued but unpaid payments totaling \$361,298.34 will be due and
6 payable in monthly installments of \$27,792.18 (or any multiple thereof), commencing on January
7 1, 2013 (unless operating cash flow permits earlier payment) and continuing on the first day of
8 the month thereafter.

9 c.) The current loan maturity date of October 1, 2014 will be (and hereby is) extended for
10 thirty-six (36) months, to a new maturity date of October 17, 2017.

11 d.) A fee of one percent (1%) of the outstanding loan balance will be paid from the
12 Miscellaneous Reserve Account Balance on the Effective Date.

13 e.) The LaSalle Bank Claim will be secured by a first position mortgage lien on the
14 Debtor's Real Property.

15 f.) The Reorganized Debtor shall have the right to prepay the LaSalle Bank Claim at par,
16 in full or in part, during the extension period (i.e., after October 1, 2014); provided, however, that
17 if prepaid, the Wells Fargo Claim must also be prepaid.

18 Class 5: All Allowed Claims in Class 5 will earn interest at the fixed rate of 2% per
19 annum from the Effective Date. The Reorganized Debtor will make semi-annual payments to
20 Class 5 creditors from the income of the Real Property each January and July commencing in
21 January 2012 until the Class 5 claims are paid in full. The total amount of each semi-annual
22 payment to Class 5 will be \$50,000, except for the final payment to be made, which will be in
23 such lesser amount as is necessary to fully satisfy Allowed Claims in Class 5. With respect to
24 each semi-annual payment to be made to holders of Allowed Claims in Class 5, each holder of an
25 Allowed Claim will receive a pro rata share of the semi-annual payment.

26 Class 6: Class 6 will retain its Equity Interests.

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1 Provisions Applicable to all Plan Payments.

2 Waterfall Provisions: The Reorganized Debtor will continue to comply with the Cash
3 Management Agreement currently in place and will make payments (including creditor payments
4 required by this Plan) from available operating income from the Real Property in accordance
5 with the following "Waterfall Provisions":
6

7 a.) The Reorganized Debtor will first pay (or reserve funds for paying when due) the
8 monthly property taxes, insurance, and normal and customary operating expenses currently
9 arising from the Real Property, as well as the administrative expenses currently arising under the
10 Cash Management Agreement.

11 b.) The Reorganized Debtor will next pay such amounts as are necessary to meet current
12 obligations arising under the Replacement Reserve Account, the Reletting Reserve Account.

13 c.) The Reorganized Debtor will next pay the monthly debt service owing on the Wells
14 Fargo Claim.

15 d.) The Reorganized Debtor will next pay the monthly debt service on the LaSalle Bank
16 Claim.

17 e.) The Reorganized Debtor will next pay the semi-annual \$50,000 payments to holders
18 of Allowed Class 5 Claims (in January and July of 2012 and January of 2013); provided, if the
19 total Allowed Class 5 Claims are less than \$150,000, the January 2013 payment shall be limited
20 to an amount sufficient to satisfy the unpaid balance of the Allowed Class 5 Claims.

21 f.) The Reorganized Debtor will next pay into the Miscellaneous Reserve Account an
22 amount equal to the expenses and loan extension fees described above with respect to the
23 treatment of the Wells Fargo Claim and LaSalle Bank Claim, until the amount of such expenses
24 and fees has been restored to the Miscellaneous Reserve Account.

25 g.) From available operating cash flow after payment of the foregoing items, the
26 Reorganized Debtor will next pay (commencing in January 2013 unless operating cash flow

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1 permits earlier payment) the accrued but unpaid \$361,298.34 in interest owing on the LaSalle
2 Bank Claim, in monthly installments of \$27,792.18 (or any multiple thereof) until paid in full.

3 h.) From available operating cash flow after payment of the foregoing items, the
4 Reorganized Debtor will next pay to the Escrow Account or the party designated by order of the
5 above entitled Court or by final order or final settlement agreement in the Bingo Lawsuit, the
6 payments required in respect of the Equity Funding Claims as provided above in the
7 Subordinated Payment Schedule.

8 i) All remaining funds shall remain with the Reorganized Debtor for its business
9 purposes.

10 VI. SOURCE OF PLAN PAYMENTS

11 The funds necessary to make the payments required by the Plan will come from the
12 Reorganized Debtor's cash on hand on the Effective Date, the Reserve Accounts, and the Rents
13 received after the Effective Date. Nothing in this Plan shall be interpreted as requiring the
14 Debtor to make Plan payments from any other source.

15 VII. MEANS FOR EXECUTION OF THE PLAN

16 On the Effective Date:

- 17 1. The Reorganized Debtor shall be responsible for implementing the Plan.
- 18 2. All of the Assets shall vest in the Reorganized Debtor free and clear of all liens,
19 security interests and claims except as otherwise expressly provided for in the Plan.
- 20 3. The Debtor shall be discharged of all debts that arose prior to the Confirmation
21 Date.

22 Except as otherwise provided in the Plan, on and after the Effective Date:

- 23 1. The Reorganized Debtor shall manage the Real Property consistent with the
24 provisions of the Plan. The Reorganized Debtor shall utilize the Rents to pay the operating
25 expenses of the Real Property.

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- 1 2. The Reorganized Debtor shall maintain the Reserve Accounts, and all agreements
2 with Midland, Wells Fargo and/or LaSalle Bank regarding the Reserve Accounts shall continue
3 to be enforceable against the parties thereto until such time as the Wells Fargo Claim and the
4 LaSalle Bank Claim are fully satisfied, except as otherwise provided in this Plan.
- 5 3. The Reorganized Debtor shall make the payments required by the Plan.
- 6 4. The Reorganized Debtor shall use diligent efforts to lease any vacant space at the
7 Real Property to creditworthy tenants on commercially reasonable terms.
- 8 5. The Reorganized Debtor may employ such persons as it deems appropriate to
9 manage and operate the Real Property, and otherwise assist it in performing the Plan.
- 10 6. The Reorganized Debtor may sell or refinance the Real Property, or any
11 component thereof, at any time if the proceeds of the sale or refinance are sufficient to pay all
12 Allowed Claims in Classes 1-5 and sums otherwise required to be paid under the terms of this
13 Plan. Any sale of the Real Property shall be: (a) free and clear of all liens and monetary
14 encumbrances pursuant to section 363 of the Bankruptcy Code, and (b) exempt from excise tax
15 pursuant to section 1146 of the Bankruptcy Code and section 458-6IA-207 of the Washington
16 Administrative Code.
- 17 7. The Reorganized Debtor may, in its discretion, pursue claims against third parties
18 and settle those claims.
- 19 8. Payments to professionals employed by the Debtor for services through the
20 Effective Date shall remain subject to approval by the Bankruptcy Court after appropriate notice.
21 Professional fees and expenses incurred by the Reorganized Debtor after the Effective Date shall
22 not require Bankruptcy Court approval and shall be paid by the Reorganized Debtor from the
23 Rents or by any third party guarantor. Notwithstanding the prior sentence, the Bankruptcy Court
24 shall be the exclusive forum for determining any dispute over professional fees and expenses
25 incurred by the Reorganized Debtor through the date the Case is closed.
- 26

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1 **VIII. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

2 1. Assumed Leases: On the Effective Date, the Tenant Leases shall be deemed
3 assumed under section 365 of the Bankruptcy Code. The Debtor and the Reorganized Debtor
4 shall not be required to pay any cure in connection with assumption.

5 2. Rejected Contracts and Leases: On the Effective Date, the Debtor rejects all
6 executory contracts and unexpired leases except the Tenant Leases.

7 3. Entry of the Confirmation Order shall constitute approval of: (1) the assumptions
8 and rejections provided for under the Plan, and (2) the cure amount of zero.

9 4. All Allowed Claims arising from the rejection of executory contracts or unexpired
10 leases shall be included in Class 5. All claims arising from the rejection of executory contracts
11 or unexpired leases shall be filed with the Bankruptcy Court on or before the first business day
12 that is twenty-one (21) days after the date of the mailing of the notice of the entry of the
13 Confirmation Order. Any such claim that is not timely filed is forever barred.

14 **IX. CLAIMS OBJECTIONS**

15 The Reorganized Debtor and any other party in interest shall have until 180 days after the
16 Effective Date to file an objection to any claim with the Bankruptcy Court. All claim objections
17 shall be determined by the Bankruptcy Court after notice to the person whose claim is being
18 objected to and an opportunity for a hearing. Both the Bingo Claims and the Equity Funding
19 Claims shall be deemed Disputed Claims, to which the other party (Equity Funding and Bingo)
20 shall be deemed to have objected, as of the Effective Date. The Bankruptcy Court will resolve
21 the claims objections as to Equity Funding and Bingo Investments, LLC upon issuance of a final
22 order or final settlement agreement resolving the Bingo Lawsuit (unless good cause shall be
23 shown for an earlier resolution of those claim objections); provided, that Equity Funding and
24 Bingo Investments LLC may agree that the final determination of their respective claims by the
25 court in the Bingo Lawsuit may be accepted by the Reorganized Debtor as a final determination
26 of such claims requiring no further claims adjudication by the Bankruptcy Court and such state

DEBTOR'S PLAN OF
REORGANIZATION -- 15

No. 11-41010
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1 court determination may be relied upon by the Reorganized Debtor for the purpose of releasing
2 and tendering payments required by this Plan.

3 X. UNCLAIMED FUNDS

4 The Reorganized Debtor may stop payment on any check intended as a payment on a
5 Class 5 claim under the Plan any time at least 60 days after the check was mailed. If the
6 Reorganized Debtor stops payment on any check pursuant to the prior sentence, the claims of the
7 payee shall be deemed automatically disallowed for all purposes and the Reorganized Debtor
8 may use those funds for other purposes. The Reorganized Debtor may rely on the address set
9 forth in each proof of claim (or if there is no proof of claim, the address set forth in the
10 bankruptcy schedules) unless the creditor provides the Reorganized Debtor with a written notice
11 of a change in the creditor's address.

12 XI. REPORTS AND STATUTORY FEES

13 Until the Case is closed, the Reorganized Debtor shall: (1) file post-confirmation reports
14 consistent with Local Bankruptcy Rule 2015-1(c), and (2) pay all quarterly fees due and payable
15 to the Office of the United States Trustee.

16 XII. CLOSING CASE

17 The Reorganized Debtor, in its discretion, may move the Bankruptcy Court to enter a
18 final decree closing the Case provided, however, the Reorganized Debtor shall not move for a
19 final decree until: (1) all claim objections have been resolved by the Bankruptcy Court, and (2)
20 payments have commenced to at least one Class of claims. After the Case is closed, the
21 Reorganized Debtor, in its discretion, may reopen the Case to resolve any issue relating to the
22 Plan or claims by creditors, and the Reorganized Debtor or the party designated by final order, or
23 final settlement agreement in the Bingo Litigation may reopen this Case according to the
24 provisions in Articles V and/or IX above.

25
26 DEBTOR'S PLAN OF
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XIII. MODIFICATION OF THE PLAN

The Debtor may propose amendments or modifications to the Plan at any time prior to the Confirmation Date. After the Confirmation Date, the Debtor or the Reorganized Debtor may, with approval of the Bankruptcy Court, and so long as it does not materially or adversely affect the interests of creditors, remedy any defect or omission, or reconcile any inconsistencies in the Plan or in the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effect of the Plan.

XIV. RETENTION OF JURISDICTION

Following the Confirmation Date, the Bankruptcy Court shall retain jurisdiction over the Reorganized Debtor and the Assets until the Plan is fully consummated and an order closing the Case is entered by the Bankruptcy Court. The Bankruptcy Court's retained jurisdiction shall give it authority to hear matters for purposes of administering the Plan, including without limitation:

1. To determine all adversary proceedings, applications, motions, and contested matters instituted prior to the closing of the Case;
2. To ensure that distributions are accomplished as provided in the Plan;
3. To determine all objections to Administrative Expenses and claims filed both before and after the Confirmation Date;
4. To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;
5. To issue orders in aid of execution of the Plan and to issue injunctions or take such other actions or make such other orders as may be necessary or appropriate to restrain interference with the Plan or its execution or implementation by any entity;
6. To consider all modifications of the Plan, to cure any defect or omission in the Plan, or to reconcile any inconsistency in the Plan or any order of the Bankruptcy Court, including without limitation, the Confirmation Order;

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REORGANIZATION -- 17

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7. To determine all applications for compensation and reimbursement of expenses of professionals under sections 330, 331 and 503(b) of the Bankruptcy Code;

8. To determine any disputes arising in connection with the interpretation, implementation, execution or enforcement of the Plan, the Confirmation Order, or any other order of the Bankruptcy Court;

9. To recover all of the Assets, wherever located;

10. To determine all matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

11. To determine any other matter not inconsistent with the Bankruptcy Code; and

12. To enter a final decree closing the Case.

DATED this 21st day of November, 2011.

CDC PROPERTIES I, LLC

By /s/ Thomas W. Price

Thomas W. Price, Member/Manager of Prium Companies, L.L.C., the sole member of CDC Acquisition Company I, LLC, the sole member of Debtor CDC Properties I, LLC

GRAHAM & DUNN PC

By /s/ Mark D. Northrup

Mark D. Northrup, WSBA #16947
Email: mnorthrup@grahamdunn.com
Brad A. Goergen, WSBA #41611
Email: bgoergen@grahamdunn.com
Attorneys for Debtor CDC Properties I, LLC

DEBTOR'S PLAN OF REORGANIZATION -- 18

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EXHIBIT A

In re CDC Properties I, LLCCase No. 11-41010

Debtor

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser", "Agent", etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no executory contracts or unexpired leases.

Name and Mailing Address, Including Zip Code, of Other Parties to Lease or Contract	Description of Contract or Lease and Nature of Debtor's Interest. State whether lease is for nonresidential real property. State contract number of any government contract.
Department of Revenue PO Box 47462 Olympia, WA 98504-7462	Lease for nonresidential real property. Debtor is lessor.
Dept of Corrections Accounts Payable Section PO Box 41107 Olympia, WA 98504-1107	Lease for nonresidential real property. Debtor is lessor.
Dept of Licensing Quynh Dao PO Box 9035 Olympia, WA 98507-9035	Lease for nonresidential real property. Debtor is lessor.
Dept of Licensing - Seattle Department of Licensing Attn: Disbursements PO Box 9036 Olympia, WA 98507	Lease for nonresidential real property. Debtor is lessor.
Dept of Licensing - Seattle Dept of Licensing Attn: Accounts Payable PO Box 9035 Olympia, WA 98507	Lease for nonresidential real property. Debtor is lessor.
Dept of Services for the Blind Attn: Peter Campbell PO Box 40933 Olympia, WA 98504	Lease for nonresidential real property. Debtor is lessor.
DSHS - ADSA Dept of Social & Health Svcs ADSA - Accounting Po Box 45600 Olympia, WA 98504-5600	Lease for nonresidential real property. Debtor is lessor.
DSHS - DVR Attn: Karin Knapp PO Box 45340 Olympia, WA 98504-5340	Lease for nonresidential real property. Debtor is lessor.
DSHS - Moses Lake DSHS - CSD Region 1 8517 E Trent #103 Spokane Valley, WA 99212	Lease for nonresidential real property. Debtor is lessor.

2

continuation sheets attached to Schedule of Executory Contracts and Unexpired Leases
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Best Case Bankruptcy

In re CDC Properties I, LLCCase No. 11-41010

Debtor

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES
(Continuation Sheet)

Name and Mailing Address, Including Zip Code, of Other Parties to Lease or Contract	Description of Contract or Lease and Nature of Debtor's Interest. State whether lease is for nonresidential real property. State contract number of any government contract.
DSHS - Wenatchee DSHS/CSD Region 1 Admin B32-8 Lease #SRL 8-0168 8517 E Trent Ave #103 Spokane, WA 99212-2334	Lease for nonresidential real property. Debtor is lessor.
ESD - Lacey 0074 Employment Security Department Attn: Facilities Unit PO Box 9046 Olympia, WA 98507-9046	Lease for nonresidential real property. Debtor is lessor.
ESD - Lacey 0075 Employment Security Department Attn: Facilities Unit PO Box 9046 Olympia, WA 98507-9046	Lease for nonresidential real property. Debtor is lessor.
ESD - Lacey 0076 Employment Security Department Attn: Facilities Unit PO Box 9046 Olympia, WA 98507-9046	Lease for nonresidential real property. Debtor is lessor.
ESD - Wenatchee Employment Security Department Attn: Vendor Pay PO Box 9046 Olympia, WA 98507-9046	Lease for nonresidential real property. Debtor is lessor.
Gambling Commission PO Box 42400 Olympia, WA 98504-2400	Lease for nonresidential real property. Debtor is lessor.
Kokopelli Cafe PO Box 146 East Olympia, WA 98540	Lease for nonresidential real property. Debtor is lessor.
Mike Neuschwander Prudential 629 Woodland Sq Loop #102A Lacey, WA 98503	Lease for nonresidential real property. Debtor is lessor.
Office of the Insurance Comm PO Box 40255 Olympia, WA 98504	Lease for nonresidential real property. Debtor is lessor.
Sentencing Guidelines Comm 4565 7th Ave SE, 2nd Fl PO Box 40927 Olympia, WA 98504-0927	Lease for nonresidential real property. Debtor is lessor.

Sheet 1 of 2 continuation sheets attached to the Schedule of Executory Contracts and Unexpired Leases

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Best Case Bankruptcy

In re CDC Properties I, LLC

Case No. 11-41010

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SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES
(Continuation Sheet)

Name and Mailing Address, Including Zip Code, of Other Parties to Lease or Contract	Description of Contract or Lease and Nature of Debtor's Interest. State whether lease is for nonresidential real property. State contract number of any government contract.
Steele Financial Group 629 Woodland Sq Loop #100 Lacey, WA 98503	Lease for nonresidential real property. Debtor is lessor.

Sheet 2 of 2 continuation sheets attached to the Schedule of Executory Contracts and Unexpired Leases

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Best Case Bankruptcy

Case 11-41010-PBS Doc 119 Filed 11/22/11 Ent. 11/22/11 07:51:16 Pg. 28 of 28

1

2 UNITED STATES BANKRUPTCY COURT

3 EASTERN DISTRICT OF NEW YORK

4 - - - - - X

5 IN RE:

6 OLYMPIA OFFICE, LLC, ET AL.

7 Debtor

8 Chapter 11

9 Case Nos: 16-74892 (AST)

10 16-75515 (AST)

11 16-75516 (AST)

12 16-75517 (AST)

13 - - - - - X

14 3305 Jerusalem Avenue
15 Wantagh, New York

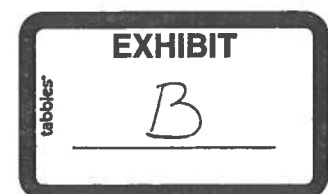
16 May 23, 2017
2:15 p.m.

17

18 **CONTINUED DEPOSITION of DAVID**

19 **BORNHEIMER**, a Witness, by **the Debtors**, in the
20 above-entitled action, held at the above time
21 and place, pursuant to the Federal Bankruptcy
22 Rules, and Notice, taken before Tracie Shand,
23 a shorthand reporter and Notary Public within
24 and for the State of New York.

25



1 David Bornheimer

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2 A P P E A R A N C E S:

3

4 LAMONICA, HERBST & MANISCALCO, LLP
5 Attorneys for Debtors
6 3305 Jerusalem Avenue
7 Wantagh, New York 11793
8 BY: JOSEPH MANISCALCO, ESQ.

7

8 SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP
9 Attorneys for Bornheimer
10 Midland Loan Servicing
11 333 South Hope Street, 43rd Floor
12 Los Angeles, California 90071
13 BY: ALAN M. FELD, ESQ.

11

-AND-

12 THOMAS M. MONAHAN, ESQ.,
13 TELEPHONICALLY

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David Bornheimer

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S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED
by and between the attorneys for the
respective parties herein, that filing,
sealing and certification be and the same are
hereby waived.

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the form of
the question shall be reserved to the time of
the trial.

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be signed and
sworn to before any officer authorized to
administer an oath, with the same force and
effect as if signed and sworn to before The
Court.

1 David Bornheimer 246

2 D A V I D B O R N H E I M E R, the witness
3 herein, having been first duly sworn by a
4 Notary Public of the State of New York, was
5 examined and testified as follows:

6 EXAMINATION BY

7 MR. MANISCALCO:

8 Q. State your name for the record,
9 please.

10 A. David Bornheimer.

11 Q. State your address for the record,
12 please.

13 A. 10851 Mastin Boulevard, Overland
14 Park, Kansas 66210.

15 Q. Good afternoon, Mr. Bornheimer. You
16 remember me. I was conducting your
17 examination in Kansas City back on April
18 12th; do you remember that?

19 A. Yes.

20 Q. I'm going to continue today with
21 that examination so we can get your full
22 deposition completed in connection with this
23 litigation; okay?

24 A. Okay.

25 Q. I'll go briefly through some of the

1 David Bornheimer 247

2 ground rules, I think, you have been through
3 this before.

4 Let me finish my question, then,
5 answer the question. There may be times when
6 your counsel will object, not with standing
7 the objection, answer the question, unless,
8 your counsel directs you not to answer the
9 question; okay?

10 A. Yes.

11 Q. Answer the questions audibly as the
12 court reporter is not able to take down your
13 body movements. She can only take down an
14 audible response; okay?

15 A. Okay.

16 MR. FELD: Tom, I want to make
17 sure you can hear?

18 MR. MONAHAN: Yes. I'm doing
19 great. Thank you.

20 Q. I went through the deposition and
21 I'll try to pick up exactly where we left off
22 on so I don't redo and ask you questions that
23 I already asked you about last time.

24 A. Okay.

25 Q. The last time we had concluded, when

1 David Bornheimer 248

2 we stopped the deposition, we were talking
3 about the payoff. I was trying to breakdown
4 the payoff. I'm going to mark as Bornheimer
5 61, this is a copy of a most recent payoff
6 statement, which is in connection with the A
7 note, but I'll show it to you. It has an
8 issue date of April 28, 2017 with an
9 expiration date of May 8, 2017.

10 Take a look at that, sir.

11 Are you familiar with this document,
12 sir?

13 A. Yes.

14 (Whereupon, Bornheimer Exhibit 61,
15 payoff statement for A Note was marked,
16 for identification, as of this date.)

17 Q. This document is what appears to be
18 a payoff statement. I know that the numbers
19 may fluctuate because today we're at May 24th
20 and we're not necessarily at the day that
21 this was issued, but can you tell me how you
22 obtained this payoff statement from the A
23 note holder?

24 A. Well, this is obtained from --
25 Midland is the master server for the A note.

1 David Bornheimer 249

2 I send instructions to my payoff department
3 who calculates this.

4 Q. I would like to go through some of
5 these different numbers.

6 The first thing this payoff
7 indicates that there's a principle balance on
8 the A note of \$30 million \$556,353.60; is
9 that correct?

10 A. Yes.

11 Q. Do you know where that principle
12 balance came from?

13 A. Yes.

14 Q. Where did it come from?

15 A. Our servicing system.

16 Q. Your servicing system tracks the
17 principle balance that's on the loan with
18 respect to the A note?

19 A. Yes.

20 Q. The next column says interest of \$1
21 million \$522,387.45; do you see that?

22 A. Yes.

23 Q. Can you tell me what that interest
24 is for?

25 A. That is the interest that's due --

1 David Bornheimer 250

2 that's past due on the A note.

3 Q. When you say "past due," is this and
4 that is due to Midland or is this interest
5 that is due to the trust of the A note?

6 A. This is interest that is due under
7 the loan.

8 Q. Who is owed this interest, is it
9 Midland as the servicer or is it the actual
10 note holder?

11 A. It's the note holder.

12 Q. The note holder is owed this money
13 based on this not being paid by the debtor?

14 A. Correct.

15 Q. In what period of time did the
16 debtor not make this interest payment under
17 this payoff statement?

18 A. Well, it says, "this quote is based
19 on interest paid to 6-1 of '16 and it
20 includes interest to 5-1 of '17."

21 Q. Is June 1, 2016 about the time that
22 the receiver took over with respect to this
23 portfolio of properties?

24 A. I believe, the receiver was
25 appointed in May of 2016.

1 David Bornheimer 251

2 Q. As of June of 2016, the receiver was
3 now collecting the rents from the tenants; is
4 that correct?

5 A. Yes.

6 Q. In June of 2016, do you know whether
7 the receiver made the principle and interest
8 payment for that month to Midland on behalf
9 of the trust?

10 A. I don't believe so.

11 MR. FELD: Objection.

12 You used the word debtor.

13 Maybe, you can clarify that.

14 MR. MANISCALCO: Could you read
15 back the question?

16 (Whereupon, the record was read
17 back by the reporter.)

18 Q. I just want to understand, the
19 interest line item is interest that is due
20 from June 1st of 2016 through May 1st of 2017
21 in accordance with the loan documents between
22 the borrower and the lender?

23 A. Yes.

24 Q. We had previously spoken about these
25 bondholder reports. We were looking at these

1 David Bornheimer 252

2 bondholder reports at your last deposition
3 and we'll look at a couple them again.

4 During this same period of time,
5 June of 2016 to May of 2017, has Midland been
6 paying the trust, the monthly principle and
7 interest for the benefit of the bondholders?

8 A. I don't know. I would have to look
9 at the bondholder report.

10 Q. Let's look at the bondholder report.
11 We'll pull out Exhibit 39.

12 Here you go, sir (handing.)

13 Look at Exhibit 39 together, this is
14 a bondholder report for December of 2016.

15 Looking at the same thing I'm
16 looking at?

17 A. Yes.

18 Q. We had previously gone through this
19 report and you had identified the loan in
20 this particular report by the loan number; do
21 you remember that testimony?

22 A. Yes.

23 Q. If you look at this report, turn to
24 page five, up at the top it indicates
25 available distribution amount \$394,772.50.

1 David Bornheimer 253

2 Do you know what that number
3 represents?

4 A. No.

5 Q. Can you tell me from looking at this
6 report, whether Midland made the December
7 payment to the trust for the benefit of the
8 bondholders?

9 A. Not from what you've shown me. I
10 don't see that.

11 Q. Can you turn to page 17. Page 17, I
12 believe, the loan number is identified as
13 30243254; is that your recollection; it's the
14 first one?

15 A. Yes.

16 Q. This indicates mortgage loan detail.
17 It identifies the interest payment and the
18 principal payment that was made for December?

19 A. Yes.

20 Q. Does this refresh your recollection
21 as to whether the Midland actually made the
22 principle and interest payment to the
23 bondholders in December of 2016?

24 A. I see the detail on here, but I'm
25 not sure that's telling me that the payment

1 David Bornheimer 254

2 was -- the money was advanced.

3 Q. As you sit here today, do you know
4 whether the bondholders were paid during the
5 period June of 2016 to May of 2017?

6 A. No.

7 Q. In anticipation of your deposition,
8 did you look through your servicing system to
9 determine whether the bondholders were being
10 paid every month?

11 A. That's not something that is housed
12 in our servicing system.

13 Q. Where would that information be?

14 A. That's a trustee level. That is
15 trustee level information. It's not
16 something that an asset manager reviews. We
17 look at the loan documents and enforcement of
18 the loan documents.

19 Q. Whether the bondholders were paid or
20 not, you wouldn't know that information?

21 A. Right. Not on my day-to-day
22 activities.

23 Q. Would someone in your group know
24 that information?

25 A. No.

1 David Bornheimer 255

2 Q. If you look here, sir, it says the
3 scheduled ending balance of the loan as of
4 December of 2016 is \$29 million \$928,896.23;
5 do you see that?

6 A. Yes.

7 Q. If that ending balance of the loan
8 is \$29.9 million, why does your payoff say
9 the principle balance is \$30.5 million?

10 A. Because that's what the schedule
11 balance should be if the borrower was making
12 their payments on time each month, but that's
13 not the balance.

14 Q. What is the balance?

15 A. It's the amount in the actual
16 balance column \$30 million \$556.353.60, which
17 is the same number that's on the payoff quote
18 we just looked at.

19 Q. Can tell me what page you're on?

20 A. Page 21.

21 Q. I was on 17.

22 Do you mean page 20?

23 A. I was on 21, but they both report
24 the same actual balance.

25 Q. So, if I look at the column which

1 David Bornheimer 256

2 says actual balance, that is the amount of
3 money that is contained on your payoff
4 statement, which is the same amount; is that
5 correct?

6 A. Correct.

7 Q. If we go back to page 17 though, the
8 beginning balance is \$30 million \$17,000 and
9 the ending schedule balance is \$29.9 million.

10 Isn't the ending schedule balance
11 the amount of money that is owed after the
12 principle and interest payment on that line
13 item is made?

14 A. No.

15 Q. How do they come up with an ending
16 schedule balance?

17 A. Well, that's scheduled balance, not
18 actual balance.

19 Q. What is the difference?

20 A. The schedule is what the balance
21 should be if the borrower was making their
22 payments as prescribed in the loan documents.
23 Actual balance is the actual balance that the
24 borrower owes and the difference is because
25 the borrower has not been making their

1 David Bornheimer 257

2 payments.

3 Q. That's the amount of money if the
4 borrower was making its payments, right?

5 A. Yes.

6 Q. The number here, \$1 million \$522,000
7 of interest, that is calculated utilizing the
8 interest payment column and multiplying it
9 by, I guess, 11 months?

10 A. No.

11 Q. How is the interest calculated?

12 A. That's calculated off of our
13 servicing system.

14 Q. So, you just press a button and some
15 computer does that calculation?

16 A. We've got the schedules are
17 programed into our servicing system based on
18 the loan document requirements, the days of
19 interest per period.

20 Q. So, that interest would be, I think,
21 the note rate here is five point four five,
22 if you took the five point four five,
23 calculated it against the outstanding
24 principal of \$30 million \$556,000, and do
25 some compound analysis, is that basically how

1 David Bornheimer 258

2 they come up with the interest?

3 A. Yeah.

4 Q. Your next column is default
5 interest. We'll get to that next.

6 Next is the special servicing fee of
7 \$290,616.56.

8 Do you know what that special
9 servicing fee is?

10 A. Yes.

11 Q. Can you tell me what that is?

12 A. It's the fee that's due to the
13 special servicer for the time period that the
14 loan is in special servicing.

15 Q. Is that the fee that the trust
16 already paid the special servicer and now the
17 trust is seeking reimbursement or is it the
18 fee that the special server should be
19 entitled to be paid?

20 A. That's the fee if the special
21 servicer is paid each month out of the
22 remittance of the money to the trust.

23 Q. Essentially, if this \$290,000
24 payment is made, it goes back to the trust,
25 right?

1 David Bornheimer 259

2 A. Reimburses the trust for the special
3 servicing fee.

4 Q. This is a reimbursable to the trust
5 that the trust already paid out, if you look
6 at these bondholder reports, the special
7 servicer gets a fee every month, correct?

8 A. Yes.

9 Q. We'll get to the late charges.
10 You have a property advance tax fee.
11 Was this the real estate taxes that were
12 paid?

13 A. Yes.

14 Q. Were these actually paid by Midland
15 or did it come from the proceeds that were in
16 the lock box account from the rents?

17 A. These were paid by Midland. Money
18 advanced by Midland.

19 Q. I believe, that the real estate
20 taxes were due some time at the end of
21 September 2016; do you remember that?

22 A. Yes.

23 Q. During that timeframe, did you make
24 a request for the receiver to make those
25 payments?

1 David Bornheimer 260

2 A. I don't know if there was a formal
3 request to the receiver, but there were
4 discussions with the receiver and the
5 receiver didn't have the money.

6 Q. In September, his position was he
7 didn't have the money to pay the taxes and
8 Midland advanced it?

9 A. That's my recollection.

10 Q. If that advance was made by Midland
11 that would be reflected on the loan history?

12 A. Yes.

13 Q. Exhibit 4.

14 MR. FELD: What's the date of
15 that?

16 MR. MANISCALCO: The loan
17 history?

18 MR. FELD: Yes.

19 MR. MANISCALCO: This was the
20 loan history that you guys had turned
21 over.

22 When does it end, Alan?

23 MR. FELD: Yes.

24 March 8th of this year.

25 Q. Let's go to September of 2016.

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2 Can you tell me, based on your loan
3 history analysis and disbursement schedule,
4 where that money was paid out?

5 A. Yes. It was actually October of
6 2016.

7 Q. Where is it?

8 A. That starts on October 14, 2016 with
9 a transaction description that says
10 disbursement tax. If you scroll over to the
11 tax column, you'll negative \$20,589.70.

12 If you scroll down on that tax
13 column, you'll see the additional negative
14 numbers, which were all advances for the tax
15 parcels.

16 Q. This loan history that we're looking
17 at, is this an internal reconciliation from
18 Midland as to money that's going in and out
19 or is this cross referencing against the bank
20 statement?

21 A. What bank statement?

22 Q. A bank statement with actual cash
23 that's coming into the bank.

24 I'm trying to understand the loan
25 history that's in front of me. I'm trying to

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2 understand, I see the tax disbursement that
3 is in here, but is this an actual
4 disbursement that Midland made?

5 A. Yes. It's an actual disbursement
6 Midland made.

7 Q. It's reflected on a loan history
8 schedule?

9 A. It's in this loan history
10 (indicating).

11 Q. This loan history schedule, which is
12 Exhibit 4, is reflecting money that comes in
13 and money that comes out, right?

14 A. Right.

15 Q. But the loan history is not
16 necessarily cross-referenced, they are
17 reconciled against the bank statement, right?

18 A. What bank statement?

19 Q. Again a bank statement.

20 You don't understand?

21 A. No.

22 Q. We have a loan history that we're
23 looking at, it's 130 pages, and it's showing
24 me ins and outs, but money going in and money
25 going out is based on cash, so, it has to be

1 David Bornheimer 263

2 reconciled against the bank statement showing
3 cash in and out; you following me so far?

4 A. No.

5 Q. Do you know how this loan history
6 schedule is reconciled by Midland?

7 A. It's money that's received on the
8 loan. If there's advances, money that's paid
9 out of the loan. That's advanced on the
10 loan, that's a better way to put it.

11 Q. So, what I'm saying is, this advance
12 that goes out on the tax on October 14th of
13 2016, it doesn't tell me here whether there's
14 any money in the account to make this
15 payment?

16 A. In what account?

17 Q. In this loan history account.
18 Still don't understand?

19 A. No.

20 Q. Do you know what a general ledger
21 is?

22 A. Yes.

23 Q. Is this loan history a general
24 ledger of an analysis of the ins and outs of
25 this loan?

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2 A. I call it a loan history report.

3 That's how we refer to it. We don't refer to
4 it as a general ledger.

5 Q. Go back two pages earlier.

6 There's is a regular payment of
7 \$280,208.58; do you see that?

8 A. Yes.

9 Q. That was a regular monthly payment
10 on the note, right?

11 A. I don't know if I would call it a
12 regular payment, but it's a payment.

13 Q. I'm saying regular payment because
14 the loan history says it's a regular payment.

15 A. Yes. I see that.

16 Q. The loan history calls this, this is
17 a regular payment that was made in May of
18 \$280.208.58, right?

19 A. Correct.

20 Q. So, when I look at this, the way I
21 look at this loan history, that money
22 actually came in for the benefit of the note
23 holder, and Midland; is that how you see
24 this?

25 A. Well, for the borrower.

1 David Bornheimer 265

2 Q. The borrower made a payment?

3 A. For the benefit of their alone.

4 Q. For the benefit of their alone?

5 A. Right.

6 Q. That \$280,000 would be reflected in
7 a bank statement, right; the money would have
8 had to go into a bank account?

9 There are tenants that are paying
10 money and the money goes into a bank account,
11 right?

12 A. Yes. In this case, because we were
13 in the cash sweep period prior to the
14 receivership.

15 Q. So, the money comes in and, then, I
16 guess, what Midland did, correct me if I'm
17 wrong, you took that regular payment and
18 applied it against the loan?

19 A. Yes. We took the \$280,000 and
20 change and applied it against the loan.

21 Q. You reflected that application on
22 this loan history detail?

23 A. Yes.

24 Q. Which in my, the way I look at it,
25 essentially, a general ledger analysis of the

1 David Bornheimer 266

2 money that's going in and out?

3 Do you understand how I see it that
4 way?

5 A. Yes. It's a loan history of the
6 money in and out, activity on this loan.

7 Q. If you look down, two lines down,
8 disbursement of \$84,078.82, this money is
9 going out.

10 Do you recall what that money is
11 for?

12 A. Probably not off the top of my head.
13 Although, we did produce additional screen
14 prints off of my system is where I would go
15 to look that stuff up.

16 If you have copies of those screen
17 prints, I could probably find that entry.

18 Q. The screen print would be the
19 disbursement account screen print?

20 A. This is what's called other reserves
21 on this report. My system has a breakdown of
22 the different reserve account it would have
23 gone out of.

24 Q. Where does it say other reserves?

25 A. The column heading.

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2 Q. It's a screen print of the other
3 reserves account?

4 A. It's not called other reserves on
5 our system.

6 Q. What is it called so I could get my
7 staff to get it?

8 A. I would have to see that account
9 which it refers to. This report lumps it
10 together. We called it other reserves. On
11 my system and the screen prints that we
12 produced, they are separate accounts, and
13 they are named differently.

14 Q. As of today, you don't know what
15 that one is?

16 A. Not off the top of my head.

17 Q. Then, you have some credits that
18 come in from May 3rd to May 10th; do you see
19 that?

20 A. Yes.

21 Q. That's additional money that's
22 coming in; do you know what those are for?

23 MR. FELD: If you need to see
24 the screen shots to look at those,
25 just let him know.